Supreme Court, U.S.
FILED
JUN 3 2002
OFFICE OF THE CLERK

No. 01-7574

In The Supreme Court of the United States

DAVID ALLEN SATTAZAHN,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Pennsylvania

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed December 17, 2001
Certiorari Granted March 18, 2002

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

CAPITAL CASE

JOINT APPENDIX
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11:25 A.M.

Supreme Court of Pennsylvania [LOGO] **Capital Appeal Docket Sheet**

Docket Number: 258 CAP

May 28, 2002

COMMONWEALTH OF PENNSYLVANIA, Appellee

v.

DAVID ALLEN SATTAZAHN, Appellant

Initiating Document:	Notice of Appeal
Case Status:	Decided/Active
Journal Number:	J-64-2000
Date Listed Submitted:	May 1, 2000
Case Category:	Capital
Case Type:	Includes Lesser Offenses

DOCKET ENTRIES

Filed Date	Docket Entry/ Document Name	Party Type	Filed By
February 25, 1999	Notice of Appeal Filed		
July 28, 1999			
Comments:	(Appellant's) Petition for Extention of Time to File Brief, filed. [UNOPPOSED – for 59 days]		

August 3, 1999			
Comments:	AND NOW, this 3rd day of August, 1999, Appellant's Petition for Extension of Time to File Brief is granted. Appellant's brief is due to be filed on or before 10/22/99. No additional extensions of time will be granted. s/ JOHNS, Prothonotary		
October 7, 1999			
Comments:	(Appellant's) Petition for Extension of Time to File Brief, filed. [For 30 days]		
October 21, 1999			
Comments:	ORDER: AND NOW, this 21st day of October, 1999, Appellant's Petition for Extension of Time to File Brief is granted. Appellant's brief is due to be filed on or before 11/22/99. s/ JOHNS, Prothonotary		
November 12, 1999	Appellant Brief		
November 22, 1999	Amicus Brief		
December 9, 1999	Appellee Brief		
May 1, 2000	Oral Argument		
November 27, 2000	Affirmed		Newman, Sandra Schultz
November 27, 2000	Judgment Entered		Office of the Prothonotary
December 11, 2000	Application for Reargument	Appellant	DAVID ALLEN SATTAZAHN

December 21, 2000			
	No BIO Letter	Appellee	COMMONWEALTH OF PENNSYLVANIA
July 20, 2001	Order Denying Application for Reargument		Per Curiam
Comments:	AND NOW, this 20th day of July, 2001, appellant's application for Reargument is hereby DENIED.		
July 23, 2001	Order Exited		Supreme Court
October 4, 2001	Notice of Extension of Time Granted		Clerk of the U.S. Supreme Court
Comments:	(Extension to file Writ of Certiorari granted until 12/17/2001)		
December 17, 2001	Petition for Writ of Certiorari		Clerk of the U.S. Supreme Court
March 18, 2002	Petition for Writ of Certiorari Granted		Clerk of the U.S. Supreme Court

04/09/97 SUPERIOR COURT OF PENNSYLVANIA
0823 OFFICIAL DOCKET

DOCKET # 002274PHL95

DOCKET ENTRIES		FOR
07/03/95	NOTICE OF APPEAL IFP	
07/03/95	DOCKETING STATEMENT EXITED	
08/22/95	LOWER COURT RECORD RECEIVED 08/05/95 LOWER COURT RECORD DUE AND 11 VOLS TESTIMONY FILED.	
09/29/95	MOT EXT OF TIME TO FILE BRIEFS 1ST	001T
10/11/95	MOT FOR EXT OF TM TO FL BRF GRANTD	001T
	10/23/95 APPELLANT'S BRIEF DUE	
10/23/95	APPELLANT BRIEF FILED	001T
	10/23/95 APPELLANT'S BRIEF DUE	
11/03/95	RPLY LETTER(S) PRINTED	001T
11/22/95	PRAECIPE FOR APPEARANCE IVA C. DOUGHERTY, ESQ.	999E
11/22/95	APPELLEE BRIEF FILED	999E
	11/22/95 APPELLEE'S BRIEF DUE	
11/30/95	REPLY RECEIVED (ARGUMENT)	
	11/23/95 REPLY DUE APPELLANT	
05/01/96	MOT FOR REARGUMENT WITH BRIEFS	001T
05/10/96	ANS TO MOT FOR REARGUMENT	999E
06/21/96	MOT FOR REARGUMENT DENIED	
	06/30/96 REARGUMENT 60 DAYS DECISION REQ;	001T

07/18/96	MOT FR ALLOW OF APPEAL IN SUP CRT
03/05/97	DENIAL OF APPEAL IN SUPREME COURT
04/09/97	REMITTED

SESSION DATA

START DATE	02/13/96	LOCATION	PHILA-DELPHIA
LISTED/ HEARD DATE	02/13/96	DAILY LIST NO.	015
JUDGES JOURNAL NO.	J-A08015-96	PANEL NO./ EN BANC	A08
ATTORNEY REQUESTED	A	ASSIGNED/ ACTUAL	S
DECISION DATE	04/18/96	JUDGEMENT DATE	04/18/96

DECISION AFFIRMED

PANEL JUDGE(S) OPINION(S) FILED
MCEWEN, S
TAMILIA, P
BROSKY, J DISSENTING MEMO

SUPREME COURT DATA
07/18/96 MOT FR ALLOW OF APPEAL IN SUP CRT
ALLOCATUR DOCKET NO.: 00469MAL96
03/05/97 DENIAL OF APPEAL IN SUPREME COURT

T=APPELLANT E=APPELLEE *=COURT APPOINTED

6/17/99 Berks County Criminal Justice Information System PAGE- 1

COURT CASE: 89 2194 CASE SUMMARY D.J. CASE: 22 89 160

DEFENDANT:
Sattazahn, David Allen ID#: 35601
201 Progress Rd.

Newmanstown PA 17073

COMPLAINT FILED: 7/17/1989 RULE 1100
DATE- CURRENT: 1/21/1991 ORIG.: 1/13/1990

ID#: 35998
ID#: 2587

CODEFENDANTS: Hammer, Jeffrey Scott
AFFIANT : McClure, Tpr. William J.

ASSIGNED JUDGE : Scott D. Keller, P.J.

ATTORNEYS: D Adams, John T.
D Miles, Kimberly A.

CONSOLIDATIONS: 89 02190

* * *

CASE ACTIVITY SUMMARY:

7/17/1989 Complaint, filed.

* * *

9/14/1989 Notice to Seek Death Penalty under 42 PA C.S. 9711(d)

* * *

5/09/1991 Guilty verdict entered.
5/09/1991 Recordation of verdict

* * *

5/09/1991 Trial – jury held [penalty phase]

* * *

2/14/1992 Sentence entered.
2/14/1992 Commitment issued to Sheriff.
2/14/1992 Sentence hearing held

* * *

11/22/1993 Appeal returned from Pa. Superior Court – decision reversed.

* * *

4/20/1994 Supreme Ct. order: Cross-petition to allow appeal – Denied.

* * *

1/20/1995 Appeal returned from Pa. Supreme Court – dismissed.

* * *

3/09/1995 Notice of Intent to Seek Death Penalty & Spcf. Aggr. Factors
3/09/1995 Memo. of Law in Support of the Add. of an Aggravating Factor
3/09/1995 Motion to Prevent Cmmnwth. from Seeking Death Penalty

* * *

5/25/1995 Deft.'s Brief in Support of Mtn. to Prevent the Commonwealth from Seeking the Death Penalty in Deft.'s Retrial

5/26/1995 Commonwealth's Brief: The Death Penalty in a Retrial for First Degree Murder

* * *

5/31/1995 Order re: Motion to Prevent the Commonwealth from seeking the Death Penalty – DENIED; Motion to Prevent the Cmmnwlth. from Adding an Additional Factor – DENIED

* * *

6/21/1995 Deft.'s Appeal to Pa. Superior Court of Order 5/31/95

* * *

7/19/1995 Opinion, filed.

* * *

4/14/1997 Appeal returned from Pa. Superior Court – decision affirmed.

4/14/1997 RECORDS RETURNED

* * *

4/25/1997 Order Continuing matter to allow Deft. to file Petition to higher court

* * *

12/29/1998 Pretrial hearing held

* * *

1/22/1999 Guilty verdict entered.
1/22/1999 Sentencing Verdict Slip, filed.
1/22/1999 Commitment issued to Sheriff.
1/22/1999 Recordation of verdict
1/22/1999 Recordation of verdict – Penalty Phase

* * *

2/16/1999 Sentence entered.
2/16/1999 Commitment issued to Sheriff.

2/16/1999 Sentence hearing held
2/25/1999 Deft.'s Appeal to Pa. Supreme Court of Order 2/16/99

* * *

6/11/1999 Opinion, filed.

COMMONWEALTH OF PENNSYLVANIA	:	In the Court of Common Pleas of Berks County, Pennsylvania Criminal
vs.	:	
DAVID ALLEN SATTAZAHN	:	No. 2194/89

TRIAL BY JURY — PENALTY PHASE
Thursday, May 9, 1991
Friday, May 10, 1991
Reading, Pennsylvania

Before THE HONORABLE SCOTT D. KELLER, Judge and a Jury.

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* * *

[19] THE COURT: Let's do it.

(Whereupon the conference in the retiring room was concluded at 3:20 p.m.)

(Jury entering the courtroom at 3:22 p.m.)

THE COURT: Ladies and gentlemen of the jury, you have found the defendant guilty of first degree murder. We are now going to hold a sentencing hearing. Counsel may present additional evidence and make further arguments, then you will decide whether to sentence the defendant to death or life imprisonment. The sentence you will impose depends on whether you find any of the things that the Pennsylvania Sentencing Code calls aggravating or mitigating circumstances. Loosely speaking, aggravating circumstances are things about the

killing and the killer which make a first degree murder case more terrible and deserving of the death penalty, while mitigating circumstances are those things which make the case less terrible and less deserving of the death penalty. Aggravating circumstances must be proven by the Commonwealth beyond a reasonable doubt, while mitigating circumstances must be proven by the defendant by a preponderance of the evidence, that is, by the greater weight of the evidence.

It may help you to have in mind some of the things that the Pennsylvania Sentencing Code says are aggravating and [20] mitigating circumstances. Aggravating circumstances include whether or not the killing occurred during the perpetration of a felony. Mitigating circumstances may also include whether or not the defendant has a history of criminal convictions, whether his age at the time of the offense is of mitigation, and other factors of the character and record of the defendant or the circumstances of his offense.

Now, at this time we'll ask the Commonwealth whether or not they have any additional testimony to present?

MR. BALDWIN: Thank you, Your Honor. Your Honor, at this time we have no additional witnesses. We would move at this time that all the trial evidence, all the trial testimony be incorporated in this proceeding. Thank you.

THE COURT: All right, that will be granted.

Ladies and gentlemen, you may consider in this phase of the trial all the testimony and all the evidence that was

admitted in the guilt or innocence phase as it may relate to the issues of aggravating and mitigating circumstances.

Now, Mr. Elder, do you have evidence to present in mitigation?

MR. ELDER: Yes, Your Honor. I think Mr. Baldwin and I have reached a stipulation, that David Sattazahn has no history of prior convictions.

MR. BALDWIN: That's correct, sir.

* * *

COMMONWEALTH OF PENNSYLVANIA	:	In the Court of Common Pleas of Berks County, Pennsylvania Criminal
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* * *

[32] (Reading, Pennsylvania, Friday, May 10, 1991 at 9:27 a.m.)

(The defendant is present.)

(Whereupon the following occurred in the retiring room:)

THE COURT: First thing we need to address on the record is the Court is going to change my ruling with regard to one of the defendant's requested points for charge. I must have been thinking of pre-1989 material I read or something. With regard to No. 5, the request is, if you, the jury, cannot reach a unanimous agreement as to the sentence, the Court shall sentence the defendant to life imprisonment. I'm going to refuse it as written and will include it, however, in modified form. That language does, in fact, occur in the instructions to the sentencing verdict

slip and also will be included in my charge to the jury. So I just wanted to make that correction. Do you understand?

MR. ELDER: Yes.

THE COURT: Okay. Now, I have prepared a general instructions and verdict slip in conformity with Rule 358A. In reviewing the evidence presented at the sentencing hearing, the Court believes that there is evidence concerning one aggravating factor, that being the defendant committed a killing while in the perpetration of a felony. The Court also believes there was evidence submitted upon the following mitigating circumstances, and for both of the mitigating I

* * *

COMMONWEALTH OF PENNSYLVANIA	:	In the Court of Commo Pleas of Berks County,
vs.	:	Pennsylvania Criminal
DAVID ALLEN SATTAZAHN	:	No. 2194/89

TRIAL BY JURY — PENALTY PHASE
Thursday, May 9, 1991
Friday, May 10, 1991
Reading, Pennsylvania

Before THE HONORABLE SCOTT D. KELLER, Judge and a Jury.

* * *

[55] CHARGE OF THE COURT

JUDGE KELLER charged the Jury as follows:

Members of the Jury, you must now decide whether to sentence the defendant to death or life imprisonment. Your sentence will depend upon what you find about aggravating and mitigating circumstances. The Sentencing Code defines aggravating and mitigating circumstances. They are things that make a first degree murder case either more terrible or else less terrible. Your verdict must be a sentence of death if you unanimously find, that is all of you find, at least one aggravating circumstance and no mitigating circumstance, or if you unanimously find one or more aggravating circumstances which outweigh any mitigating circumstances. If you do not all agree on one or

the other of these findings then the only verdict that you may return is a sentence of life imprisonment.

The Commonwealth must prove any aggravating circumstances beyond a reasonable doubt. This does not mean the Commonwealth must prove the aggravating circumstances beyond all doubt and to a mathematical certainty. A reasonable doubt is the kind of doubt that would cause a reasonable and sensible person to hesitate before acting upon [56] a matter of – upon an important matter in his own affairs. A reasonable doubt must be a real doubt. It may not be one that a juror imagines or makes up to avoid carrying out an unpleasant duty. That's the burden on the aggravating circumstance.

By contrast, the defendant must prove any mitigating circumstance, however he only has to prove it by a preponderance of the evidence, that is, by the greater weight of the evidence. Put the evidence and arguments of the defense on this side, the evidence and arguments on this side of the prosecution with regard to any mitigating (sic) circumstance, and it's the greater weight of the evidence which is the burden of the defense as to a mitigating circumstance.

In this case, under the Sentencing Code, and I remind you, in this case we're not concerned about other cases, we're concerned about what is before you in this case; only the following matters, if proven to your satisfaction, beyond a reasonable doubt, can be aggravating circumstances, and there was one that has been alleged: The defendant committed a killing while in the perpetration of a felony.

In this case, again in this case, under the Sentencing Code the following matters, if proven to your satisfaction

by a preponderance of the evidence, can be mitigating [57] circumstances: That the defendant has no significant history of prior criminal convictions; the age of the defendant at the time of the crime; and a catch-all, any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

You have been given or I will give you a sentencing verdict slip on which to record your verdict and findings. I shall now give you further directions on how to go about reaching a verdict, making findings, and using the verdict slip. As I told you earlier, and as the verdict slip indicates, you must agree unanimously on one of two general findings before you can sentence the defendant to death. They are a finding that there was at least one aggravating circumstance and no mitigating circumstances, or a finding that there are one or more aggravating circumstances which outweigh any mitigating circumstances.

In deciding whether aggravating outweighs mitigating circumstances do not simply count their number. Compare the seriousness and importance of the aggravating with the mitigating. If you all agree on either one of the two general findings then you can and must sentence the defendant to death. When voting on the general findings, you are to regard a particular aggravating circumstance as presented as present only if you all agree that it is present. On the [58] other hand, each of you is free to regard a particular mitigating circumstance as present, despite what other jurors may believe. This different treatment of aggravating and mitigating circumstances is one of the law's safeguards against unjust death sentences. It gives a defendant the full benefit of any mitigating circumstances. It is closely related to the burden of proof of requirements. Remember, the Commonwealth must prove any aggravating

circumstance beyond a reasonable doubt, while the defendant only has to prove any mitigating circumstances by a preponderance of the evidence.

If you do not agree unanimously on a death sentence and on one of the two general findings that was subject – that would support it, then you have two immediate options. You may either continue to discuss the case and deliberate what your verdict should be or, if all of you agree to do so, you may stop deliberating and sentence the defendant to life imprisonment. If you are still unable to agree on a verdict after conscientious and thorough deliberations, report that to me. If it seems to me that you are hopelessly deadlocked it will be my duty to sentence the defendant to life imprisonment.

Read the verdict slip which we will give to you before you begin deliberating. It will help you to set out a [59] procedure and a format for the discussions and deliberations in this area. It tells you, among other things, how to record your sentencing verdict and findings.

It has the name of the defendant, David Allen Sattazahn. It has first degree murder sentencing verdict slip general instructions. This you read. It will again help you formulate the procedure for your deliberations. It has the possible aggravating circumstances, the possible mitigating circumstances, for you to consider under the burden of proofs I have indicated to you. It has further instructions that I have basically read to you. Then you have the sentencing verdict and findings. If you unanimously find either death or life imprisonment then you must fill out this part of the verdict slip. The verdict and its findings, it's sort of self-explanatory. If you find death then you must indicate that you found an aggravating circumstance

and no mitigating circumstances. That's one way that you may find the death penalty. Or, two, that you found one or more aggravating circumstances which outweighed any mitigating circumstances. Then you must list the aggravating circumstance you found. You must also list any mitigating circumstances that one or more of you found that were outweighed by the aggravating circumstance. If you unanimously find life imprisonment you must still indicate on this form that that was your – that's [60] your sentence and that you found that no aggravating circumstance exists or that the mitigating circumstance or mitigating circumstances are not outweighed by any aggravating circumstances and, again, you must list your finding as to aggravating and mitigating circumstances.

Very important to read the instructions here and the verdict slip before you actually begin deliberating.

Now, you must decide sentence. Consider all the evidence and arguments of both the Commonwealth and the defendant, including the evidence you heard during the earlier trial, the evidence that was presented during the sentencing hearing, including the stipulation of counsel that the defendant has no history of prior criminal convictions, as it may relate to the issue of whether or not there exists a mitigating circumstance. Be fair. Do not let yourself be influenced by passion or prejudice.

It was entirely up to the defendant whether to testify in this stage of the proceedings. You must not draw any adverse inference from his silence.

Remember that your verdict is not merely a recommendation, it actually fixes the punishment at death or life imprisonment. Your verdict, whether it be death or life

imprisonment, must be unanimous; it must be the verdict of each and every one of you.

* * *

COMMONWEALTH OF PENNSYLVANIA	:	In the Court of Common Pleas of Berks County,
vs.	:	Pennsylvania Criminal
DAVID ALLEN SATTAZAHN	:	No. 2194/89

TRIAL BY JURY — PENALTY PHASE
Thursday, May 9, 1991
Friday, May 10, 1991
Reading, Pennsylvania

Before THE HONORABLE SCOTT D. KELLER, Judge and a Jury.

* * *

[62] point for charge, I would ask that you instruct them on that, that it has to be beyond a reasonable doubt, the aggravating circumstances outweigh the mitigating circumstances.

THE COURT: That's not the standard. The standard for the existence and finding of an aggravating circumstance is beyond a reasonable doubt. The process that they go through is a balancing, weighing process, and a verdict of death is proper when they find that the aggravating circumstance outweighs any mitigating circumstances. All of your points are preserved, however denied. Anything else?

MR. ELDER: No.

(Whereupon the sidebar conference was concluded.)

THE COURT: One last thing before I do send you out. You'll note that there's a place for the date and a place for the foreperson to sign the verdict slip.

You may now go out and deliberate.

(Whereupon the jury retired to begin their deliberates at 10:30 p.m..)

(Whereupon the following occurred at 1:54 p.m.)

(The defendant is present.)

THE COURT: Gentlemen, we have received a communication from the foreperson indicating this jury is hopelessly deadlocked. I will bring the jury down and inquire of the foreperson and the jury whether or not any further [63] deliberations would be productive.

MR. ELDER: Your Honor, at this time I would move that the note be made an exhibit and made part of the record, and also move that under 9711(c), subparagraph 1, subparagraph Roman Numeral 5, that the jury be discharged and that you enter a sentence of life imprisonment.

THE COURT: I'm not willing to do that immediately. We'll bring the jury down. Certainly this note will be marked as an exhibit. I will inquire, make sure they are, in fact, hopelessly deadlocked.

(Note from jury — marked for identification as COURT EXHIBIT NO. 4.)

MR. ELDER: For the record, Your Honor, I would object to that inquiry.

THE COURT: All right, it's noted.

MR. ELDER: Your Honor, could you keep the jury from coming in yet?

THE COURT: For gosh sake.

(Short pause.)

THE COURT: All right.

(Jury entering the courtroom at 1:57 p.m.)

THE COURT: Mr. Foreperson, I have received your communication indicating that in your opinion the jury is hopelessly deadlocked. Is that correct?

[64] THE FOREMAN: That's correct, Your Honor.

THE COURT: Do you believe that any further deliberation by this jury would arrive at a unanimous decision on the penalty?

THE FOREMAN: No, Your Honor.

THE COURT: Is there anyone among the jury that believes that further deliberation would be productive and lead to a unanimous decision on the penalty in this case? If there is anyone please indicate at this time.

A JUROR: No.

THE COURT: You have been deliberating on this sole issue three and a half hours. It's an issue that I'm sure you honed in on very quickly. It's a very succinct issue, a distinct issue. Very well.

The Court at this time finding that you are unable to find unanimously for either sentence of death or life imprisonment will discharge you from your duties in

deliberating any further in this particular case. And because of that, as a result of your inability to unanimously decide, the Court, by virtue of the law, will at the time of formal imposition of sentence sentence this defendant to life imprisonment.

I want to formally thank, all and each and every one of you, for your service as jurors in this case. You performed

* * *

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Before THE HONORABLE SCOTT D. KELLER,
Judge and a Jury.

* * *

[67] **COPY OF COURT EXHIBIT NO. 4.**

Your Honor –

We, the jury are hopelessly deadlocked at 9-3 for life imprisonment. Each one is deeply entrenched in their position. We do not expect anyone to change his or her position.

/s/ Joseph A. Salogar
FOREPERSON

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY,

PENNSYLVANIA CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

vs. **NO. 2194/89**

DAVID ALLEN SATTAZAHN

FIRST DEGREE MURDER
SENTENCING VERDICT SLIP

I. GENERAL INSTRUCTIONS

A. READ THROUGH THE ENTIRE VERDICT SLIP BEFORE BEGINNING DELIBERATIONS.

B. AGGRAVATING AND MITIGATING CIRCUMSTANCES PRESENTED TO THE JURY.

1. The following aggravating circumstance(s) (is) (are) submitted to the jury and must be proved by the Commonwealth beyond a reasonable doubt:

(1) [List and number separately]
THE DEFENDANT COMMITTED A KILLING WHILE IN THE PERPETRATION OF A FELONY

(2) _____

(3) _____

(4) _____

2. The following mitigating circumstance(s) (is) (are) submitted to the jury and must be proved by the defendant by a preponderance of the evidence:

(1) [List and number separately]
THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTIONS.

(2) THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME

(3) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

[2] C. DO NOT COMPLETE THIS SENTENCING VERDICT SLIP UNTIL YOUR DELIBERATIONS ARE CONCLUDED. THIS SENTENCING VERDICT SLIP IS ONLY TO BE USED TO RECORD YOUR SENTENCING VERDICT AND THE FINDINGS UPON WHICH IT IS BASED.

D. IF, AFTER SUFFICIENT DELIBERATION, YOU CANNOT UNANIMOUSLY REACH A SENTENCING VERDICT, DO NOT COMPLETE OR SIGN THIS SLIP, BUT RETURN IT TO THE JUDGE. THE JUDGE WILL DETERMINE IF FURTHER DELIBERATIONS ARE REQUIRED; IF THEY ARE NOT, THE JUDGE WILL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

II. SENTENCING VERDICT AND FINDINGS

If you have reached a unanimous verdict, complete this part of the form.

In Section A. indicate whether the sentencing verdict is death or life imprisonment. If the sentence is death, indicate the basis for that verdict by completing Section B. If the sentence is life imprisonment, indicate the basis for that verdict by completing Section C.

A. We, the jury, unanimously sentence the defendant to (check one):

___ Death

___ Life Imprisonment

B. The findings on which the sentence of death is based are (check one):

___ 1. At least one aggravating circumstance and no mitigating circumstance.

The aggravating circumstance(s) unanimously found (is) (are):

_____

_____

_____

___ 2. One or more aggravating circumstances which outweigh(s) any mitigating circumstance(s).

The aggravating circumstance(s) unanimously found (is) (are):

_____

_____

_____

The mitigating circumstance(s) found by one or more of us (is) (are):

_____

_____

_____

C. The findings on which the sentence of life imprisonment is based are (check one):

___ 1. No aggravating circumstance exists.

___ 2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

[3] The mitigating circumstance(s) found by one or more of us (is) (are):

_____

_____

_____

_____

_____

_____

The aggravating circumstance(s) unanimously found (is) (are):

_____

_____

_____

_____ _____

Date JURY FOREPERSON

_____

Commonwealth of Pennsylvania

v.

David Allen Sattazahn
Defendant

the Court of Common Pleas
Berks County, Pennsylvania
Criminal Division

Criminal Action No.
214-89
Count No. 1 Murder
(1st Degree)

SENTENCE

AND NOW, Feb. 14, 1992, the sentence is that the defendant be committed ~~for a period of not less than ___~~ (hrs.), (days), (months), (years) nor more than ___ (days), (months), (years) to:

( ) the Berks County Prison and upon completion of his/her minimum sentence shall be released without a petition upon approval of a suitable parole plan by the Berks County Probation Office.

( ) Defendant may participate in the Earned Time Program at the Berks County Prison.

(✓) the Bureau of Corrections for confinement in a State Correctional Facility. for Life Imprisonment.

(✓) This sentence shall be effective this date

( ) This sentence shall be effective this date and will be concurrent with the sentence(s) imposed at Criminal Action No. ___

( ) This sentence shall commence at the expiration of the sentence(s) imposed at Criminal Action No. ___ and shall be consecutive to said sentence(s).

The defendant is to receive credit for 943 days served.

In addition to the above confinement, Defendant shall:

(✓) Pay the costs of prosecution.

( ) Pay a fine in the sum $_____

(✓) Pay restitution in the amount of $_____ (jointly and several) **or** as determined by the Berks County Probation Office and agreed upon by the defendant, after consultation with his/her counsel, and by the victim, or failing agreement, as ordered hereafter;

(✓) Submit to urine surveillance and other testing and participate in any treatment programs, including inpatient treatment, as directed by the ~~Berks County Probation Office and/or~~ the Pennsylvania Board of Parole, as applicable, and pay the costs thereof as directed.

( ) Because the sentence is pursuant to the Controlled Substance, Drug, Device and Cosmetic Act of Pennsylvania, all Federal Benefits are hereby denied in accordance with the provisions of Section 5301 of the Federal Anti-Drug Abuse Act of 1988, P.L. No. 100-690 for the following term of years:

Possessor:
- ( ) This being a first offense for a period of _____. (Cannot exceed one (1) year.)
- ( ) This being a second or subsequent offense for a period of _____. (Cannot exceed five (5) years.)

Trafficker:
- ( ) This being a first offense for a period of _____. (Cannot exceed five (5) years.)
- ( ) This being a second or offense for a period of _____. (Cannot exceed ten (10) years.)
- ( ) This being a third or subsequent offense for life.

The defendant shall also:

( ) Pay the sum of $_____ towards the cost of the Court Reporting Network.

( ) Attend the Alcohol Safe Driving Program and pay $_____ towards the cost of said program within 30 days upon being paroled.

( ) Pay the sum $_____to the County of Berks within _____ months towards the cost of treatment, counseling and/or supervisory control, payments to begin upon being paroled.

( ) Pay the sum $_____ to be distributed as provided for in 42 Pa. C.S. Section 3571 and Section 3573 among the Commonwealth, Berks County and/or municipality.

( ) Participate in _____ hours of Community Service as directed by the Berks County Community Service Department and pay any fees established.

( ) Undergo treatment under Vehicle Code 75 Pa. C.S. Section 1548(d) (Act 122 of 1990).

This is a case:

( ) Involving drugs with a value of more than $1,000.00.

( ) In which a motor vehicle was essentially involved.

( ) and in which the vehicle driven by the defendant was a commercial vehicle.

(✓) Other Special Conditions:

Defendant and Jeffrey Hammer shall not serve their terms of imprisonment in the same state correctional facility

Defendant shall be subject to such conditions governing parole, including a plan for payment of costs,

fine, and/or restitution as established by the Berks County Probation Office.

BY THE COURT:

/s/ Scott D. Keller J.

PENNSYLVANIA COMMISSION ON SENTENCING GUIDELINE SENTENCE FORM

See INSTRUCTIONS ON REVERSE

I. IDENTIFICATION

OFFENDER'S NAME SATTAZAHN, David A.		OFFENDER'S SEX [x] MALE [ ] FEMALE	
OFFENDER'S BIRTHDATE 1-19-62		COMMISSION IDENTIFICATION [Illegible]	
JUDGE'S NAME Keller	OFFENDER'S RACE [x] WHITE/ [ ] BLACK/ [ ] HISPANIC/ [ ] OTHER	STATE IDENTIFICATION NUMBER	
NAME OF PERSON COMPLETING FORM King	COUNTY Berks	DATE OF SENTENCE 2/14/92	DOCKET NUMBER 2194-89

II. PRIOR RECORD SCORE

MURDER	* * *
VOLUNTARY MANSLAUGHTER	* * *
RAPE	* * *
INVOL. DEVIATE SEXUAL INTER.	* * *
KIDNAPPING	* * *
ARSON (Endangering Person – Felony I)	* * *
ROBBERY (Felony I)	* * *
BURGLARY	* * *
AGGRAVATED ASSAULT	* * *
OTHER FELONY Is and FELONY IIs	* * *

FELONY DRUG OFFENSES	* * *
FELONY IIIs	* * *
WEAPON MISDEMEANORS	* * *
OTHER MISDEMEANOR CONVICTIONS __ If 2 or 3 enter 1, if 4 or more enter 2 TOTAL (cannot exceed "6") → PRIOR RECORD SCORE = [0]	

III. DUI

Convictions in previous 7 years:	____
ARDs in previous 7 yrs. (ARDs before 1/15/83 do not count):	____
TOTAL:	____

IV. GUIDELINES/SENTENCES

NAME OF OFFENSE NO. 1 Ct. #1 Murder (1st degree)		TITLE AND SECTION 2502§ A	
GRADING F1		OTN C157916-3	
OFFENSE GRAVITY SCORE NA		PRIOR REC. SCORE NA	
ENHANCEMENT – ADD APPLICABLE LENGTHS TO THE RANGES [x] NONE [ ] YOUTH [ ] SCHOOL [ ] DEADLY WEAPON = SPECIFY ____			
STANDARD RANGE	AGGRAVATED RANGE	MITIGATED RANGE	
MANDATORY SENTENCE			
SENTENCE IMPOSED: [ ] PROBATION _____ MOS [ ] COUNTY INCARCERATION MIN- _____ MOS [x] STATE INCARCERATION MAX- life impros. MOS [ ] FINE $ _____			

[x] RESTITUTION $ jtly + sev Comments: 943 t/s			
DATE OF OFFENSE 4-12-87			
GUIDELINE RANGE [ ] Standard Range [ ] Aggravated Range – Comp. Sec. V [ ] Mitigated Range – Comp. Sec. V [ ] Guideline Departure – Comp. Sec . V			
MANDATORY LAW [ ] Firearm [ ] Drug [ ] Repeat Offender [ ] Public Transportation [ ] Crimes Against Elderly [ ] Crimes Against Infants [ ] Other _____			
NAME OF OFFENSE NO. 2 Ct. #4 Robbery		TITLE AND SECTION 3701§ A 1 I	
GRADING F1	OTN C157916-3	OFFENSE GRAVITY SCORE 9	PRIOR REC. SCORE 0
ENHANCEMENT – ADD APPLICABLE LENGTHS TO THE RANGES [ ] NONE [ ] YOUTH [ ] SCHOOL [x] DEADLY WEAPON – SPECIFY hand gun			
STANDARD RANGE 48-84	AGGRAVATED RANGE 72-99	MITIGATED RANGE 39-60	
SENTENCE IMPOSED: [ ] PROBATION _____ MOS [ ] COUNTY INCARCERATION MIN- 5 yrs. ~~MOS~~ [x] STATE INCARCERATION MAX- 10 yrs ~~MOS~~ [ ] FINE $ _____ [x] RESTITUTION $ jtly + sev Comments: comm @ esp of Ctl			

DATE OF OFFENSE 4-12-87
GUIDELINE RANGE [ ] Standard Range [ ] Aggravated Range – Comp. Sec. V [ ] Mitigated Range – Comp. Sec. V [ ] Guideline Departure – Comp. Sec . V
MANDATORY LAW [ ] Firearm [ ] Drug [ ] Repeat Offender [ ] Public Transportation [ ] Crimes Against Elderly [ ] Crimes Against Infants [ ] Other _____

V. DEPARTURE/AGG/MIT REASONS

VI. REVIEW

TOTAL CONFINEMENT ____ Mos. to ____ Mos.	TYPE OF CONVICTION [ ] Bench Trial [ ] Jury Trial [ ] Non-neg. Plea [ ] Neg. Plea
JUDGE'S SIGNATURE /s/ Scott D. Keller 2-14-92 Date	

[2] INSTRUCTIONS:

There are three copies of this form. The white copy is for the Clerk's file. The yellow copy is to be sent to the Commission on Sentencing, P.O. Box 1200, State College, PA 16804. The blue copy is for the judge's file. All copies of the form must be [illegible]. Questions about the guidelines or other aspects of sentencing can be answered by the

Commission at (814) 863-2797 (or 433-2797 on the state's PANET network).

All sentences for crimes which occurred during the same transaction should be on a single form. (Use a Continuation Form (PCS-2A) when there are sentences for more than two crimes from the same transaction. See instructions on the Continuation Form.) Sentences for crimes from different transactions go on separate forms, even if those crimes are sentenced at the same time or have the same docket number. A "transaction" is a crime or crimes which were committed by a defendant at a single time or in temporally continuous actions that are part of the same episode, event, or incident, or which are conspiracy and the object offense. "Spree" crimes are not part of the same transaction unless they occurred as continuous actions not separated in time by law-abiding behavior.

Do not list on the form any summary offenses, ARDs (except those for prior DUIs), probation without verdict dispositions, or crimes which merge for purposes of sentencing.

Section I: Complete all information.

Section II: Do not complete this section when the only current conviction is for DUI. In all other cases enter all prior convictions, including the number of non-weapons misdemeanor convictions. Enter juvenile adjudications only when there is a current felony conviction and when the other conditions required by §303.7(b) are met.

Section III: Complete only when a current conviction is for DUI. Enter the number of DUI convictions and ARDs within the previous seven years. ARDs which were ordered

prior to January 15, 1993 are never counted, even if they are within a seven year period.

Section IV: When DUI is the only current conviction enter only the name of the offense and the sentence that was imposed. For all current crimes other than DUI, complete all information. Check whether the sentence was within the standard range, aggravated range, mitigated range, or whether it departs from the guidelines. In addition, indicate whether the sentence was imposed pursuant to any mandatory sentencing statute. The chief mandatory statute concern specific crimes committed: with visibly possessed firearms (42§9712); on a public transportation (42§9713; by repeat offenders (42§§9714-9715; against persons over 60 (42§9717; or against persons under 16 (42§9718). There are also mandatory minimum sentences for some drug offenses committed in certain ways (18§§6314 and 7508). On the "Comments" line indicate any special conditions of probation, work-release status, weekend incarceration, community service, etc.

Section V: List the reasons for departing from the guidelines or for using the aggravated or mitigated ranges whenever any departing, aggravating, or mitigating sentence is given. Remember to reverse both carbons when using the additional space for reasons on the back of this form.

Section VI: For all cases, enter the total cumulative minimum and maximum lengths of confinement to which the defendant is being sentenced for crimes listed on this form or on an attached Continuation Form (i.e. the actual length of time he is sentenced to serve for crimes arising from this transaction). Do not include any previously imposed sentences, or any new sentences which are being

imposed for crimes arising from a different transaction. Enter the type of conviction. The judge should sign and date the form after verifying that the information on the form is correct.

CLERK OF COURTS
Berks County, Pennsylvania

COMMITMENT AUTHORIZATION

COMMONWEALTH OF PENNSYLVANIA

vs.

David A. Sattazahn

CASE # 2194-89
OTN # C157916-3
COUNT # Murder (1)

TO THE WARDEN OF BERKS COUNTY PRISON:

I do hereby certify that the above named defendant has been officially committed by the Court **IN THE CASE SPECIFIED ABOVE**.

This commitment authorizes the keeping of this prisoner, in a manner prescribed by law, in the Berks County Prison **ON THE CASE SPECIFIED ABOVE**, until such time as an official discharge is issued in this matter.

This commitment has been authorized by the Court pursuant to the following:

[x] Sentenced for a period of LIFE to ---------- with credit of 943 days.

[x] S.C.I. or another jurisdiction.

[ ] Finding of GUILTY.

[ ] Bail forfeited.

[ ] New Bail Set: ($ ___)

[ ] Non-payment of fines or costs.

[ ] County Parole Violation/Revocation (*circle*).

[ ] Special Court Order or Bench Warrant (___)

[ ] Juvenile certified by the Court as an Adult.

In witness to the above, I have signed and officially sealed this commitment this 14 day of Feb., A.D. 1992.

/s/ S. Keller
Judge

/s/ E. Slamon
Deputy Clerk of Courts

/s/ [Illegible]
Deputy Sheriff

/s/ _____
Berks County Prison

CLERK OF COURTS
Berks County, Pennsylvania

DISCHARGE AUTHORIZATION

COMMONWEALTH OF PENNSYLVANIA

vs.

DAVID ALLEN SATTAZAHN

CHARGE MURDER (1ST DEGREE)
CASE # 2194-89
CTN # C157916-3

TO THE WARDEN OF BERKS COUNTY PRISON:

I, SHARON WINTERS, Deputy Clerk of Courts for Berks County, do hereby certify that DAVID ALLEN SATTAZAHN has been officially discharged by the Court **IN THE CASE SPECIFIED ABOVE.**

This discharge authorizes the release of this prisoner from your custody ON THE ABOVE LISTED CHARGE AND CASE NUMBER ONLY.

This discharge has been authorized by the Court pursuant to the following:

[ ] Finding of NOT GUILTY

[ ] Charges Dismissed

[ ] Discharge by special COURT ORDER: (*Specify*)

[ ] Bail posted in this Case.

[ ] County PROBATION ordered in this case.

[ ] County PAROLE or RE-PAROLE in this case.

[x] Transportation to another jurisdiction or facility: (*Specify*)

SENTENCE – LIFE IMPRISIONMENT [sic]
SCI – GRATEFORD

In witness to the above, I have signed and officially sealed this discharge this 18TH day of FEBRUARY, A.D. 1992.

/s/ Sharon Winters
Deputy Clerk of Courts

DC-300B (PART II) (Rev. 10-85) (TO BE ATTACHED TO PART I – COURT COMMITMENT) COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 598, CAMP HILL, PA. 17011 NOTE: Additional supply of this form available at above address:

Commonwealth of Pennsylvania vs. DAVID ALLEN SATTAZAHN	
COMMITMENT NAME (LAST, FIRST, INITIAL, SUFFIX)	
COURT NUMBER #2194-89	OFFENSE TRACKING NUMBER (OTN) C 157916-3

The above defendant after [ ] pleading guilty [ ] nolo contendre [x] being found guilty was on FEB. 14, 1992 sentenced by Judge ~~District Justice~~ SCOTT D. KELLER to a term of not less than ____ ~~years~~ ____ ~~months~~ ____ ~~days nor more~~ LIFE IMPRISONMENT than ____ years ____ months ____ days, or ____ for the offense of CT #1 – MURGER [sic] – 1ST DEGREE (Section 2502(A) of the Crimes Code) or (other statute) ____.

FINE	COSTS	RESTITUTION
AMOUNT $____ To Be Paid To: [ ] COUNTY [x] COMMON-WEALTH	AMOUNT $____ To Be Paid BY: [ ] COUNTY [x] DEFENDANT	JOINT AND SEVERAL

CREDIT FOR TIME SERVED	EFFECTIVE DATE OF SENTENCE
CREDIT FOR 943 DAYS TIME SERVED.	FEB. 14, 1992

This sentence shall be deemed to run concurrent to any existing sentences, effective the date of imposition unless otherwise stipulated below:

COURT NUMBER	OFFENSE TRACKING NUMBER (OTN)
#2194-89	C 157916-3

The above defendant after [ ] pleading guilty [ ] nolo contendre [x] being found guilty was on FEB. 14, 1992 sentenced by Judge~~/District Justice~~ SCOTT D. KELLER to a term of not less than 5 years ____ months ____ days nor more than 10 years ____ months ____ days, or ____ for the offense of CT #4 – ROBBERY (Section 3701(A)(1)(I) of the Crimes Code) or (other statute) ____.

FINE	COSTS	RESTITUTION
AMOUNT $____ To Be Paid To: [ ] COUNTY [x] COMMON-WEALTH	AMOUNT $____ To Be Paid By: [ ] COUNTY [x] DEFENDANT	JOINT AND SEVERAL

CREDIT-FOR TIME SERVED	EFFECTIVE DATE OF SENTENCE
CREDIT FOR -0- DAYS TIME SERVED.	THIS SENTENCE SHALL COMMENCE AT THE EXPERATION [sic] OF THE SENTENCE IMPOSED AT CRIMINAL ACTION #2194-89 CT #1 AND BE SAID TO RUN CONSECUTIVE.

This sentence shall be deemed to run concurrent to any existing sentences, effective the date of imposition unless otherwise stipulated below:

(Seal)	In witness of the above sentence(s) for offense(s) as well as those found on the reverse side of this document, I have hereunto set my hand and seal of said court this 18TH day of FEB. 1992. AUTHORIZED SIGNATURE

CLERK OF COURTS

DATE: 2-14-92

JUDGE: S. KELLER

DEFENDANT: DAVID A. SATTAZAHN

NUMBER: 2194-89

STENO: L. SWEIGERT P.O.

CT RM: 5-A

CLERK: SLAMON

COMTH. ATTY: M. BALDWIN

DEFENSE ATTY: J. ELDER

TYPE HEARING: SENTENCE

TESTIMONY: NO

PROBATION OFFICER: P. McCAULEY

RESULTS OF HEARING: SCI-

SENTENCE: CT. 1 – LIFE – CREDIT FOR 943 DAYS SERVED.

CT. 4 – 5 to 10 YRS – SCI AT EXP. OF CT. 1

CT. 7 – 1 to 2 YRS – SCI. AT EXP. OF CT. 1

CT. 14 – 5 to 10 YRS SCI. AT EXP. OF CT. 1

CT. 15 – 1 to 2 YRS SCI AT EXP OF CT 1

COMMONWEALTH OF PENNSYLVANIA	:	**IN THE COURT OF COMMON PLEAS OF**
v.	:	**BERKS COUNTY, PENNSYLVANIA**
DAVID ALLEN SATTAZAHN	:	**CRIMINAL DIVISION**
	:	**No. 2194/89**

NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND SPECIFIC AGGRAVATING FACTORS UNDER 42 Pa. C.S. §9711(d)

The Commonwealth intends to seek the Death Penalty under 42 Pa. C.S. §9711. The aggravating circumstance(s) are as follows:

_____Victim was a fireman, peace officer or public servant concerned in official detention who was killed in the performance of his duty.

_____The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

_____The victim was being held by the defendant for ransom or reward, or as a shield or hostage.

_____The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.

_____The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.

__XX__ A killing committed in the perpetration of a felony.

_____ In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.

_____ Torture.

__XX__ A significant history of felony convictions involving the use or threat of violence to the person.

_____ The defendant has been convicted of another Federal or State Offense committed either before or at the time of the offense at tissue [sic] for which a sentence of life imprisonment or death was imposable or the defendant was undergoing a sentence of life imprisonment for any reason at time of the commission of the offenses.

_____ The Defendant has been convicted of another murder committed either before or at the time of the offense at issue.

_____ The defendant has been convicted of Voluntary Manslaughter as defined in **Pa. C.S. §2503**, committed either before or at the time of the offense at issue.

_____ The defendant committed the killing or was an accomplice in the killing, as defined in **18 Pa. C.S. §306(c)** (relating to liability for conduct of another complicity) while in the perpetration of a felony under the provisions of the act of

April 14, 1972 (P.L. 233, No. 64) known as the Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of **18 Pa. C.S. §7508** (relating to drug trafficking sentencing and penalties).

_____ At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in **18 Pa. C.S. §306(c)**, and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing distributing or delivering controlled substances or counterfeit controlled substances.

_____ At the time of the killing, the victim was or had been a non-governmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in **18 Pa. C.S. §306(c)**, and the killing was in retaliation for the victim's activities as a non-governmental informant or in providing information concerning criminal activity to an investigative, law enforcement or police agency.

_____The victim was a child under twelve (12) years of age.

The Commonwealth reserves the right to add additional aggravating circumstances should facts develop justifying such additions.

Date: March 9, 1995 /s/ Mark C. Baldwin
MARK C. BALDWIN
District Attorney

CLERK OF COURTS
CERTIFICATION OF DISTRIBUTION

COMMONWEALTH OF PA. DOCKET NO. 2194/89
DATE March 9, 1995

vs.

David Allen Sattazahn

1. "B.R.Crim.P. 306.1(f)(g)" requires a copy of your motion/petition for each party.
2. "B.R.Crim.P. 306.1(f)" requires that the names and addresses of those to be served be provided.
3. Check the appropriate boxes to assure proper service. Initial and X each applicable party to receive a copy.
4. Attach this Certificate of Distribution to the original document. Retain the second copy for your files.

_____ [X] Original Clerk of Courts

_____ [X] Criminal Court Computer Office

_____ [ ] Name and Address of Moving Party

_____
_____
_____
_____

hand delivered w/a [X] Name of District Attorney
Mark C. Baldwin, D.A.

_____ [X] Name of Public Defender
John Elder

_____ [ ] Name and Address of Private Counsel

_____
_____
_____
_____

_____ [ ] Sheriff

_____ [ ] Berks County Prison

_____ [ ] Name and Address of Probation and/or Parole Officer

_____
_____
_____
_____

_____ [X] Other:

Inmate # BT7445 Defendant – SCI Huntingdon – Drawer R. Huntingdon, PA 16652

Judge Keller

I certify I have delivered sufficient copies of the attached document and request service as set forth above.

/s/ L. Labrosky
Signature

[SEAL]

Clerk of Courts of Berks County, Pennsylvania

Berks County Courthouse
33 North Sixth Street
Reading, PA 19601
(215) 378-8116

James P. Troutman, ***Clerk of Courts***
Felix Chils, ***Chief Deputy***
Daryl F. Moyer, ***Solicitor***

PROOF OF SERVICE

I, Stacey, certify that I served the within document upon the following:

(✓) Court Information Management Office

( ) District Attorney's Office

(✓) Public Defender's Office

( ) Adult Probation Office

On the 10th day of March, 1995.

(✓) Defendant by mailing a certified copy thereof to defendant at the following address:

David Sattazahn

On the 10th day of March, 1995.

( ) Defendant's attorney by mailing a certified copy thereof to:

On the ___ day of _____, 19__.

Statements in this proof of service are made subject to the penalties for unsworn falsification to authorities under the Crimes Code ss. 4904 (18 PACS, ss. 4904).

/s/ Stacey L. Lanning
Signature of Server

/s/ J. Keller

COMMONWEALTH OF PENNSYLVANIA	:	**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA**
VS.	:	
DAVID ALLEN SATTAZAHN	:	**CRIMINAL DIVISION**
	:	**No. 2194/89**
	:	**KELLER, J.**

Mark C. Baldwin, Esquire, District Attorney
Attorney for the Commonwealth
John Elder, Esquire, Assistant Public Defender
Attorney for the Defendant

MEMORANDUM OPINION KELLER, S.D., JUDGE

JULY 19, 1995

The Constitution of the Commonwealth of Pennsylvania does not prevent Defendant David Allen Sattazahn from choosing between his right to appeal a life sentence mandated by 42 Pa.C.S.A. § 9711(c)(2) and the remote risk of a death sentence upon retrial.

> "The criminal process, like the rest of the legal system is replete with situations requiring 'the making of difficult judgments' as to which course to follow . . . Although a defendant may have a right, even of constitutional dimensions, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose."

Crampton v. Ohio, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711, 729 (1971), *rehearing granted and judgment vacated insofar as it leaves undisturbed the death penalty imposed,* 408 U.S. 941, 92 S.Ct. 2873, 33 L.Ed.2d 765 (1972). In addition, the Commonwealth may seek an additional aggravating circumstance upon retrial which was not sought in the original trial.

PROCEDURAL HISTORY

On May 9, 1991, Defendant was found guilty by a jury of [2] Murder of the First Degree, Murder of the Second Degree, Murder of the Third Degree, Robbery, Aggravated Assault (Serious Bodily Injury), Aggravated Assault (Deadly Weapon), Possessing Instruments of Crime, Conspiracy, and Firearms Not to Be Carried Without a License.[1] During the penalty phase of this capital case, the jury deadlocked and the Court sentenced Defendant to life imprisonment as required by 42 Pa.C.S.A. §9711(c)(2). On March 12, 1992, Defendant appealed from this Court's Judgment of Sentence. By opinion dated July 30, 1993, the Superior Court of Pennsylvania reversed Defendant's convictions and remanded for a new trial. The Supreme Court of Pennsylvania granted allocatur but then dismissed the appeal as improvidently granted.

On March 9, 1995, after jurisdiction of the case returned to this Court, the Commonwealth filed a Notice of Intent to Seek the Death Penalty and Specific Aggravating Circumstances Under 42 Pa.C.S.A. §9711(d). In its Notice, the Commonwealth added the additional aggravating circumstance of "[a] significant history of felony convictions involving the use or threat of violence to the person." 42 Pa.C.S.A. §9711(d)(9)(Supp. 1995). The addition stems from guilty pleas Defendant entered in Berks

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[1] 18 Pa.C.S.A. §2502(a),(b),(c); 18 Pa.C.S.A. §13701(a)(1)(i); 18 Pa.C.S.A. §2702(a)(1),(4); 18 Pa.C.S.A. §1907(a); 18 Pa.C.S.A. §903; 18 Pa.C.S.A. §6106(a).

County in September of 1991, in Schuykill County in March of 1992, and in Lebanon County in April of 1992. On March 13, 1995, Defendant filed a Motion to Prevent the Commonwealth from Seeking the Death Penalty in Defendant's Retrial. After hearing held and the [3] submission of written briefs, this Court denied Defendant's Motion to Prevent the Commonwealth from Seeking the Death Penalty in Defendants Retrial, as well as Defendant's Motion to Prevent the Commonwealth from Adding an Additional Factor Under 42 Pa.C.S.A. §9711(d). On June 26, 1995, Defendant filed a Notice of Appeal from this Court's Order denying his motions.

This opinion is written pursuant to Pa.R.A.P. 1925(a) and, for the following reasons, we disagree with Defendant's complaints and request that his appeal from this Court's Order dated May 31, 1995 be denied.

I. AVAILABILITY OF THE DEATH PENALTY UPON RETRIAL

In his first matter complained of on appeal, Defendant alleges that this Court erred in failing to grant his Motion to Prevent the Commonwealth from Seeking the Death Penalty Upon Retrial. Defendant incorporates his motion by reference to support his complaint. This Court properly denied Defendant's Motion and his allegations to the contrary are without merit.

A. DOUBLE JEOPARDY AND PENNSYLVANIA'S RIGHT OF APPEAL

Among the numerous complaints he raises on appeal, Defendant presents one issue of first impression in this Commonwealth. Defendant contends that Article I, Section 10 of the Pennsylvania Constitution, the double jeopardy

section, interpreted in conjunction with Article V, Section 9, the right of appeal section, precludes the Commonwealth from seeking the death penalty upon retrial of a defendant previously sentenced to life [4] imprisonment pursuant to 42 Pa.C.S.A. §9711(c)(2). We disagree.

Defendant argues that an interpretation of the Pennsylvania double jeopardy section which allows the imposition of a death sentence after a life sentence creates an "irreconcilable conflict" with his constitutionally guaranteed right of appeal. Defendant claims that an interpretation of the double jeopardy section in conjunction with the right of appeal section distinguishes Pennsylvania's double jeopardy section from the federal double jeopardy clause, thereby distinguishing his case from *Commonwealth v. Martorano*, 535 Pa. 178, 634 A.2d 1063 (1993) *(federal double jeopardy did not preclude prosecution from seeking death penalty on retrial of defendant where jury had been unable to reach agreement on penalty in first trial, with the result that the court had been required to impose sentence of life imprisonment)*. Specifically, Defendant alleges that permitting a death sentence after a life sentence violates the Pennsylvania double jeopardy prohibition because it impermissibly chills his constitutionally guaranteed right of appeal.

In support of his claim, Defendant relies primarily upon foreign authority. *See State v. Washington*, 380 So.2d 64 (La. 1980); *State v. Wolf*, 216 A.2d 586 (N.J. 1966); and *People v. Henderson*, 386 P.2d 677 (Cal. 1963). We find this non-binding precedent instructive but ultimately unpersuasive as to interpreting provisions of the Pennsylvania Constitution.

Like its federal counterpart, the Pennsylvania double jeopardy prohibition does not preclude the Commonwealth from [5] seeking the death penalty upon Defendant's retrial following a statutorily mandated life sentence. A defendant may be required to choose between the possibility of a death sentence upon retrial and exercising his right to appeal a sentence of life imprisonment. As Justice Benjamin N. Cardozo wrote, "[t]here are dangers in any choice." *People v. Defore*, 242 N.Y. 13, 25, 150 N.E. 585, 589 (1926). Article I, Section 10 of the Pennsylvania Constitution does not forbid defendants from making difficult decisions based solely upon the risks, however remote, attendant to those decisions. The Supreme Court of Pennsylvania has previously expressed its support of this interpretation.

In *Commonwealth v. Martorano*, the Supreme Court clearly expressed support for an interpretation of Pennsylvania's double jeopardy section which follows the interpretation of the federal double jeopardy clause. In reaching its decision, the Court concluded that a jury's failure to reach a unanimous agreement as to the sentence to be imposed in a capital case is not a verdict and does not result in an acquittal on the merits of the death penalty. *Martorano*, 634 A.2d at p. 1073. Accordingly, the Supreme Court of Pennsylvania, in solely reviewing federal double jeopardy principles, then held that "a default judgment does not trigger a double jeopardy bar to the death penalty upon retrial." *Id. at* p. 1070. After finding that arguments on the Pennsylvania double jeopardy section were not properly raised in *Martorano*, the Court nevertheless stated that "**[w]e believe that the federal approach to this issue is a sound one.**" *Id.* at p. [6] 1071 (Emphasis added). The right of appeal guaranteed by Article V, Section 9 of the

Pennsylvania Constitution does not undermine the wisdom of this approach.

Requiring defendants to accept certain risks in order to exercise their right of appeal is not a novel concept. Under Pennsylvania law prior to *Martorano* and the trial in the instant case, defendants who appealed their judgments of sentence "accept[ed] the risk that the Commonwealth may seek a remand for resentencing thereon if the disposition in the appellate court upsets the original sentencing scheme of the trial court." *Commonwealth v. Goldhammer,* 512 Pa. 587, 517 A.2d 1280, 1283 (1986), *U.S. cert. denied,* 480 U.S. 950, 107 S.Ct. 1613, 94 L.Ed.2d 798 (1987). Although *Goldhammer* did not deal with the possibility of a death sentence after a life sentence, it clearly held that the right of appeal in Pennsylvania is not entirely free "of all the attending repercussions," including those which are adverse to the defendant. *Id.*, 517 A.2d at p. 1283. Potentially adverse repercussions may warrant caution in a defendant's decision to appeal, but they do not unconstitutionally chill the right of appeal.

Defendant's "chill" argument is weakened further by the fact that he was not chilled in the exercise of his own appellate rights in the instant case. At the time Defendant appealed, the question of whether the death penalty could be sought upon retrial, where the first trial resulted in a statutorily mandated life sentence, remained unsettled as a matter of law. In spite [7] of this uncertainty, Defendant exercised his right to appeal. Defendant's decision to appeal demonstrates the flaw in his "chill" argument because he was not in fact chilled. Further, we agree with the United States Supreme Court in that "we doubt that the 'chill factor' will often be a deterrent of any significance . . . the likelihood of actually receiving a harsher

sentence is quite remote at the time a convicted defendant begins to weigh the question whether he will appeal." *Chaffin v. Stynchcombe,* 412 U.S. 17, 93 S.Ct. 1977, 36 L.Ed.2d 714, 727 (1973). At the time a defendant decides whether he will appeal, a death sentence is merely speculative. Before a death sentence becomes reality, a host of contingencies must occur: the appeal must succeed, relief must be in the form of a remand rather than a dismissal, the prosecution must elect to retry the case and seek the death penalty, the defendant must refuse to plea bargain and opt for a trial, the defendant must be convicted, and the sentence imposed must be death rather than life imprisonment. "[W]e cannot agree that such speculative prospects interfere with the right to make a free choice whether to appeal." *Id.*, 36 L.Ed.2d at p. 728. Nor can we agree that such a choice is barred by Pennsylvania's double jeopardy section. "[T]he law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." *Nash v. U.S.,* 229 U.S. 373, 377, 33 S.Ct. 780, 57 L.Ed. 1232, 1235 (1913) *(Justice Oliver Wendell Holmes).* The Pennsylvania Constitution does not offer a defendant blanket [8] protection from difficult decisions.

In the instant case, Defendant elected to exercise his constitutional right in Pennsylvania to appeal. By necessity, an appeal involves a challenge to that which is already decided for some indeterminate form of relief. "Appeal, v.t. in law, to put the dice in the box for another throw." Bierce, Ambrose, *The Devil's Dictionary* (Garden City, NY: Doubleday and Company, Inc.), p. 17. Article V, Section 9 of the Pennsylvania Constitution guarantees a defendant "another throw" of the dice. However, there is no guarantee of a risk-free throw. Defendant's right of

appeal does not sufficiently distinguish double jeopardy in Pennsylvania from the federal double jeopardy clause so as to render the Pennsylvania Supreme Court's discussion in *Martorano, supra*, unsound. Accordingly, Article I, Section 10 of the Pennsylvania Constitution does not preclude the Commonwealth from seeking the death penalty upon Defendant's retrial.

B. ADDITIONAL ALLEGATIONS OF ERROR

Of his remaining complaints on appeal concerning the availability of the death penalty, Defendant fails to raise any issues of merit or first impression. First, Defendant alleges that the Commonwealth's seeking the death penalty violates the Due Process and Equal Protection clauses of the United States Constitution. The Supreme Court of Pennsylvania has held that federal principles of due process and equal protection do not preclude imposition of the death penalty upon reconviction following a retrial. *Martorano,* 634 A.2d at p. 1071-1072. [9] Therefore, Defendant's first complaints are entirely without merit. Defendant's further contention that the Commonwealth's seeking the death penalty violates the Due Process and Equal Protection sections of the Pennsylvania Constitution is likewise without merit. The Pennsylvania Constitution provides no greater due process or equal protection rights in this situation than its federal counterpart. *Commonwealth v. Clutter*, 419 Pa.Super. 275, 615 A.2d 362, 366 (1992), *allocatur denied,* ___ Pa. ___, 633 A.2d 149 (1993); *Dansby v. Thomas Jefferson University Hospital*, 424 Pa.Super. 549, 623 A.2d 816, 820 (1993), *allocatur denied,* ___Pa. ___, 651 A.2d 538 (1994). Accordingly, Defendant's due process and equal protection arguments,

based upon either the federal or state constitution, do not allege a basis for relief.

Next, Defendant argues that, under the circumstances, the Commonwealth's seeking the death penalty constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution. The death penalty does not, under all circumstances, constitute cruel and unusual punishment in violation of the Eighth Amendment. *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), *rehearing denied,* 429 U.S. 875, 97 S.Ct. 197, 50 L.Ed.2d 158 (1976). Defendant has not alleged any facts, nor do we find any facts in the instant circumstances, which would render the availability of the death penalty upon retrial cruel and unusual.

Third, Defendant alleges that the Commonwealth's seeking the death penalty violates his right of appeal pursuant to Article V, [10] Section 9 of the Pennsylvania Constitution. However, Defendant appealed his prior conviction in the instant case. Defendant's appeal to the Superior Court was successful, granting him relief in the form of a retrial. Defendant was afforded his right to appeal and he fully exercised that right. Clearly, his right of appeal has not been violated in any way.

Defendant complains further that 18 Pa.C.S.A. §109 prevents the Commonwealth from seeking the death penalty in his retrial. However, the Supreme Court of Pennsylvania has stated, "[t]his argument presents nothing novel; in substance, it is really nothing more than respondents' double jeopardy argument. We have already fully reviewed that argument and found it to be meritless." *Martorano,* 634 A.2d at p. 1073. Likewise, we find Defendant's complaint to be meritless.

Fifth, Defendant complains that the Pennsylvania Supreme Court's decision in *Martorano, supra*, as applied to his case, operates as an *ex post facto* law in violation of Article I, Section 10 of the United States Constitution and Article I, Section 17 of the Pennsylvania Constitution. Defendant's complaint is entirely without merit. First, the *ex post facto* prohibition in both constitutions refers to the passage of laws, i.e. legislative enactments, rather than judicial interpretations of law. Second, even if the *ex post facto* prohibition does apply to judicial decisions, the *Martorano* decision operates only as a procedural change in the law and did not effect an increase in the potential sentence for the charge of Murder of the First [11] Degree. Such a procedural change is not an unconstitutional *ex post facto* application of law. *Commonwealth v. Marshall*, 537 Pa. 336, 643 A.2d 1070, 1073 (1994); *Commonwealth v. Young,* 536 Pa. 57, 637 A.2d 1313 (1993). Accordingly, Defendant's ex post facto arguments do not afford him a basis for relief.

Defendant also raises a number of challenges to the *Martorano* decision itself. Specifically, Defendant complains that (1) the *Martorano* court's treatment of 42 Pa.C.S.A. §9711 violates the United States and Pennsylvania Constitutions, (2) that the retroactive application of *Martorano* violates the United States and Pennsylvania Constitutions, (3) that he would be prejudiced by the retroactive application of *Martorano* because he did not knowingly and intelligently agree to the discharge of the jury during the penalty phase, and (4) that he would be prejudiced by the retroactive application of *Martorano* because he did not knowingly and intelligently waive his right to appeal the sufficiency of the evidence during the penalty phase. We cannot conclude that the decision of the

Pennsylvania Supreme Court in *Martorano,* or its treatment of 42 Pa.C.S.A. §9711; is unconstitutional. Moreover, we find no merit in any of Defendant's arguments concerning retroactivity. The *Martorano* decision did not create a new rule of law. Rather, the Pennsylvania Supreme Court's decision in *Martorano* was merely a declaration of the current state of the law. As such, the application of *Martorano* to Defendant's case is not a retroactive application of law. Defendant's specific complaints concerning [12] the *Martorano* decision are wholly without merit.

In his first matter complained of on appeal, Defendant fails to raise any grounds for relief which would preclude the Commonwealth from seeking the death penalty upon retrial.

II. ADDITIONAL AGGRAVATING CIRCUMSTANCES UPON RETRIAL

Defendant also charges that the Commonwealth should not be allowed to add an aggravating circumstance upon retrial which was not sought during the original trial. Defendant complains that adding an aggravating circumstance would violate his rights and that no authority exists for such an addition. Again, we disagree.

As previously discussed, permitting the Commonwealth to seek the death penalty upon Defendant's retrial does not impermissibly burden his rights under the Pennsylvania or United States Constitution. For the very same reasons, permitting the Commonwealth to add a new aggravating circumstance also does not impermissibly burden Defendant's constitutional rights. Accordingly, Defendant's constitutional claims for relief are without merit.

Defendant's contention that no authority exists for the addition of an aggravating circumstance upon retrial is likewise meritless. The Commonwealth may introduce a new aggravating circumstance in the penalty phase of a second capital murder trial without providing an excuse for not having presented that factor in the first trial. *Commonwealth v. Zook*, 532 Pa. 79, 615 [13] A.2d 1, 19-21, (1992), *U.S. cert. denied,* 113 S.Ct. 1420, ___ U.S., ___ 122 L.Ed,2d 789 (1993). *Zook*, *supra,* differs from the instant case only in that the original jury sentenced the defendant to death at the conclusion of the first trial. In *Zook* and in the instant case, the Commonwealth was forced to retry the defendant in both guilt and, assuming a guilty verdict upon Defendant's retrial for purposes of discussion, penalty phases. In each instance, the Commonwealth sought to add one or more aggravating circumstances upon retrial which were not sought in the original trial. In *Zook*, the Supreme Court of Pennsylvania held that the Commonwealth could add a new aggravating circumstance in the retrial. Clearly, in light of *Martorano*, *supra,* and our findings herein, the holding in *Zook* applies to the instant case in spite of the different penalties imposed in the first trials. The fresh start brought about by a successful appeal renders the two cases, at the retrial stage, indistinguishable.

Further support for application of the *Zook* holding may be found in the comment to Pa.R.Cr.P. 352. The comment states that in a redetermination of sentencing, which is functionally equivalent to the penalty phase following a guilty verdict upon retrial, "the attorney for the Commonwealth may not introduce any new aggravating circumstance except where there has been an intervening conviction for an offense committed prior to the

present conviction which would constitute an aggravating circumstance." At this point, Defendant has not been convicted [14] in the instant case. Therefore, Defendant's guilty pleas following the first verdict in the instant case, which may constitute the new aggravating circumstance of a significant history of felony convictions which involve the threat of violence to the person, are intervening convictions for offenses committed prior to any conviction in the instant case. The comment to Pa.R.Cr.P. 352 clearly weighs in favor of permitting the Commonwealth to introduce a new aggravating circumstance in this circumstance.

Although Defendant alleges that permitting the Commonwealth to add a new aggravating circumstance upon retrial violates his constitutional rights in the absence of statutory authority, his claim is meritless. Defendant's rights are not impermissibly burdened by such an addition. Further, *Zook*, *supra*, and the comment to Pa.R.Cr.P. 352 offer ample authority for adding a new aggravating circumstance upon retrial, particularly in light of *Martorano*, *supra*, and our own findings herein. The Commonwealth may seek a new aggravating circumstance upon retrial.

CONCLUSION

Upon being sentenced to life imprisonment, Defendant chose to exercise his right of appeal. Defendant prevailed on appeal and won a new trial, a fresh start. However, because Defendant was not acquitted of death in his first trial, the Commonwealth is entitled to a fresh start in seeking the death penalty upon retrial. Fairness dictates,

and the Constitutions of [15] Pennsylvania and the United States do not prohibit, a fresh start upon retrial for all concerned. "The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." *Snyder v. Massachusetts*, 291 U.S. 97, 122, 54 S.Ct. 330, 78 L.Ed. 674, 687 (1934) (*Justice Benjamin N. Cardozo*). Defendant successfully appealed for a new trial. To keep the balance true, the United States and Pennsylvania Constitutions permit the Commonwealth to seek the death penalty and add a new aggravating circumstance upon retrial. Defendant's decision to appeal under these circumstances, while difficult, is certainly not unconstitutional in the Commonwealth of Pennsylvania.

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DATE July 19, 1995

vs.

David Allen Sattazahn

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J. A08015/96

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DAVID ALLEN SATTAZAHN, Appellant	:	No. 02274 Philadelphia 1995

Appeal from the Order Entered May 31, 1995, in the Court of Common Pleas of Berks County, Criminal, No. 2194/89

BEFORE: McEWEN, P.J., TAMILIA, and BROSKY, JJ.

JUDGMENT

***ON CONSIDERATION WHEREOF**, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* BERKS *County be, and the same is hereby* AFFIRMED.

BY THE COURT:

/s/ David A. Szewczak
PROTHONOTARY

Dated: APRIL 18, 1996

J. A08015/96

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DAVID ALLEN SATTAZAHN, Appellant	:	No. 02274 Philadelphia 1995

Appeal from the Order Entered May 31, 1995, in the Court of Common Pleas of Berks County, Criminal, No. 2194/89

(Filed April 18, 1996)

BEFORE: McEWEN, P.J., TAMILIA, and BROSKY, JJ.

MEMORANDUM:

Appellant, David Allen Sattazahn, appeals from the order of the trial court which denied the motion of appellant which sought to prevent the Commonwealth from seeking the death penalty or arguing the existence of an additional aggravating circumstance upon the retrial of appellant. We find the arguments presented by appellant are without merit and, therefore, affirm.

Appellant in the brief he has submitted to this Court presents the following claims:

> The Pennsylvania constitutional prohibition against double jeopardy, the appellant's Pennsylvania constitutional rights of appeal, due process, and equal protection, prohibit the Commonwealth from seeking the death penalty in the appellant's retrial.
>
> The United States constitutional prohibition against double jeopardy, and the United States

constitutional rights of due process and equal protection, prohibit the Commonwealth from seeking the death penalty in the appellant's retrial.

The Commonwealth should be precluded from adding an additional aggravating factor under 42 Pa.C.S. § 9711(d).

[2] The distinguished Judge Scott D. Keller has ably encapsulated the facts underlying this appeal:

> On May 9, 1991, defendant was found guilty by a jury of murder of the first degree, murder of the second degree, murder of the third degree, robbery, aggravated assault (serious bodily injury), aggravated assault (deadly weapon), possessing instruments of crime, conspiracy, and firearms not to be carried without a license. During the penalty phase of this capital case, the jury deadlocked and the court sentenced defendant to life imprisonment as required by 42 Pa.C.S. § 9711(c)(2). On March 12, 1992, defendant appealed from this court's judgment of sentence. By opinion dated July 30, 1993, the Superior Court of Pennsylvania reversed defendant's convictions and remanded for a new trial. The Supreme Court of Pennsylvania granted allocatur but then dismissed the appeal as improvidently granted.
>
> On March 9, 1995, after jurisdiction of the case returned to this court, the Commonwealth filed a notice of intent to seek the death penalty and specific aggravating circumstances under 42 Pa. C.S. § 9711(d). In its notice, the Commonwealth added the additional aggravating circumstance of "[a] significant history of felony convictions involving the use or threat of violence to the person." 42 Pa.C.S. § 9711(d) (9) (Supp. 1995). The

> addition stems from guilty pleas defendant entered in Berks County in September of 1991, in Schuylkill County in March of 1992, and in Lebanon County in April of 1992. On March 13, 1995, defendant filed a motion to prevent the Commonwealth from seeking the death penalty in defendant's retrial. After hearing held and the submission of written briefs, this court denied defendant's motion to prevent the Commonwealth from seeking the death penalty in defendant's retrial, as well as defendant's motion to prevent the Commonwealth from adding an additional factor under 42 Pa.C.S. § 9711(d). On June 26, 1995, defendant filed a notice of appeal from this court's order denying his motions.

Appellant first contends that the Commonwealth should not be permitted to seek the death penalty on retrial since the jury did not vote to impose the death penalty during the penalty phase of the first trial of appellant. Appellant [3] argues that this result is compelled by the tension between two provisions of the Pennsylvania Constitution, namely, the double jeopardy protection[1] and the right to appeal.[2] Appellant frames the tension between the two provisions thusly:

> [Appellant] after originally receiving a life sentence and successfully overturning his conviction could not again face the death penalty. . . . The effect . . . is to create a whole class of people frightened from exercising their Pennsylvania constitutional right to appeal for fear of receiving in the future the harshest of sentences, the death

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[1] Pennsylvania Constitution Article I, Section 10.

[2] Pennsylvania Constitution Article V, section 9.

penalty, if successful in his or her appeal and unsuccessful in the retrial.

To interpret the Pennsylvania double jeopardy clause so as to allow a death sentence after a life sentence would create an irreconcilable conflict with the defendant's right of appeal under the Pennsylvania Constitution.... In order to give full effect to the Pennsylvania right of appeal, the Pennsylvania double jeopardy clause must be interpreted so as to preclude the possibility of a death sentence being imposed after a life sentence has been imposed.

What good is the Pennsylvania constitutional right of appeal, if exercising that right after receiving a life sentence, and winning the appeal, subjects a defendant to the death penalty upon retrial?

We are constrained to summarily reject the rationale of appellant based on the reasoning of our Supreme Court in *Commonwealth v. Martorano,* 535 Pa. 178, 634 A.2d 1063 (1993). As the *Martorano* Court noted, the analysis which it applied under the Federal Constitution is equally compelling when [4] applied under the Pennsylvania Constitution.[3] Double jeopardy protection does not attach under either constitutional analysis because of the particular attributes of the Pennsylvania procedure for determining when the death penalty shall be imposed. This is so even where the first trial culminated in a guilty verdict, but the jury did not impose a death sentence:

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[3] Appellant presents in his second claim the precise issue decided in *Martorano, supra,* and, even were we persuaded of the merit of the claim – which we are not – , we would, of course, be bound by the decision of our Supreme Court.

> What respondents fail to apprehend is the significance of the absence of decision in the instant case. Here, unlike the sentencer in *Bullington* or other cases just discussed, the jury did not make a decision on the merits regarding an appropriate penalty. It did not find that the state had. failed to prove its case. It made no findings about the existence of any aggravating or mitigating circumstances. It was deadlocked. Since it made no decision, there could not in fact be any "acquittal on the merits." Nor did the imposition of a life sentence by the trial judge operate as an acquittal. Under Pennsylvania's sentencing scheme, the judge has no discretion to fashion sentence once he finds that the jury is deadlocked. The statute directs him to enter a life sentence. 42 Pa.C.S. § 9711(c)(1)(v) (. . . if . . . further deliberation will not result in a unanimous agreement as to the sentence, . . . the court *shall* sentence the defendant to life imprisonment.) (emphasis added). The judge makes no findings and resolves no factual matter. Since judgment is not based on findings which resolve some factual matter, it is not sufficient to establish legal entitlement to a life sentence. A default judgment does not trigger a double jeopardy bar to the death penalty upon retrial.

Commonwealth v. Martorano, supra at ___, 634 A.2d at 1070.

Contrary to the argument of appellant, this result is unaffected by the right to appeal guaranteed under the [5] Pennsylvania Constitution, Article V, section 9, because, upon winning a new trial on appeal, the retrial of appellant is on a "clean slate". *Commonwealth v. Martorano, supra* at ___, 634 A.2d at 1070; *Commonwealth v. Oakes,* 481 Pa. 343, ___, 392 A.2d 1324, 1326-27 (1978); *Smith v.*

Board of Probation & Parole, 161 Pa.Cmwlth. 173, ___, 636 A.2d 291, 292 (1994). Appellant is not, simply by securing the benefit of a new trial, to be afforded, as well, the luxury of avoiding all risk averted during the first trial, but inherent in the trial process. For example, on retrial, the court will make entirely new rulings on the admission of "evidence, points for charge and other matters which arise in the course of a trial." *Commonwealth v. Oakes, supra* at ___, 392 A.2d at 1327. Appellant also runs the risk at a second trial that the Commonwealth may pursue a different, perhaps more effective, trial strategy. *Commonwealth v. Chapman,* 255 Pa.Super. 265, ___, 386 A.2d 994, 1004 (1978). Similarly, however, appellant, too has the opportunity to pursue a different, more effective trial strategy and is entitled to a second appeal to this Court should he be convicted at his second trial. *Commonwealth v. Oakes, supra* at ___, 392 A.2d at 1327 (fresh appellate rights following second trial); *Commonwealth v. Chapman, supra* at ___, 386 A.2d at 1004 (defendant may alter approach to second trial). This "clean slate" rule, while it may entail a degree of risk for appellant, provides "a further opportunity 'in obtaining a fair readjudication of his guilt free from error' and at the same time accommodate[s] society's 'valid concern for insuring that the guilty are punished.'" *Commonwealth v. Vogel,* 501 Pa. 314, ___, 461 A.2d 604, 611 (1983), *cert. denied,* 465 U.S. 1104, 80 L.Ed.2d 133, 104 S.Ct. 1603 (1984), *quoting Burks v. United States,* 437 U.S. 1, 15, 98 S.Ct. 2141, 2149, 57 L.Ed.2d 1, 12 (1978). Since neither principles of double jeopardy nor the right to appeal guaranteed by the Pennsylvania Constitution bars the Commonwealth from again seeking the death penalty at the second trial, the first claim of appellant must be rejected as meritless.

Appellant next asserts that the Commonwealth should not be allowed to use, as an aggravating factor under 42 Pa.C.S. § 9711(d), convictions upon which sentence was imposed after his first trial where the criminal conduct occurred prior to May 9, 1991. The Commonwealth seeks to argue on retrial that appellant has a significant history of felony convictions involving the use or threat of violence to the person, 42 Pa.C.S. § 9711(d)(9), based on the following intervening crimes of appellant:

September 19, 1991	Appellant pleads guilty to five counts of burglary and one count of robbery in Berks County.
March 17, 1992	Appellant pleads guilty to third degree murder in Schuylkill County.
April 1, 1992	Appellant pleads guilty to burglary in Lebanon County.

[7] Appellant argues that principles of double jeopardy and the following comment to Pa.R.Crim.P. 352, which governs notice of aggravating circumstances, prohibit the introduction of the instant aggravating circumstance:

> If the trial court orders a new sentencing hearing, or the Supreme Court remands a case for a redetermination of penalty pursuant to 42 Pa.C.S. § 9711(h)(4) (Supp. 1990), the attorney for the Commonwealth may not introduce any new aggravating circumstance except when there has been an intervening conviction for an offense committed prior to the present conviction which would constitute an aggravating circumstance.

Pa.R.Crim.P. 352, comment.

We disagree with the rationale offered by appellant since our Supreme Court, in *Commonwealth v. Zook*, 532 Pa. 79, ___, 615 A.2d 1, 19-21 (1992), *cert. denied*, 507 U.S. 974, 113 S.Ct. 1420, 122 L.Ed.2d 789, (1993), held that principles of double jeopardy are inapplicable where the Commonwealth seeks to introduce additional aggravating factors at a subsequent trial. *Accord*: *Poland v. Arizona*, 476 U.S. 147, 155-56, 106 S.Ct. 1749, 1755, 90 L.Ed.2d 123 (1986). Moreover, appellant's reliance on the comment to Rule 352 is misplaced. The comment provides that where, as here, there has been an intervening conviction, *i.e.*, a conviction occurring after the initial sentencing, but prior to resentencing, that intervening conviction may be introduced during the penalty phase. Accordingly, the trial court properly concluded that the Commonwealth may introduce additional aggravating circumstances during the penalty phase of the second trial.

[8] Order affirmed.

BROSKY, J., FILES A DISSENTING MEMORANDUM.

DISSENTING MEMORANDUM BY BROSKY, J.

I dissent. I disagree with the majority that *Commonwealth v. Martorano*, 535 Pa. 178, 634 A.2d 1063 (1993), controls our decision in the present case. Our Supreme Court, while examining a similar factual scenario, did not consider the same argument advanced here. More specifically, *Martorano* did not address the interplay of the constitutional right to appeal.

It would seem obvious that one's decision to appeal a conviction would be impacted by the possibility that a

death sentence could be handed down after a second trial even though it was not the result of the first trial. As such, the position of the majority would have a chilling effect upon the right to appeal. These considerations were not addressed in either *Martorano* or *Poland v. Arizona*, 476 U.S. 147, 106 S.Ct. 1749 (1986), upon which our Supreme Court relied in *Martorano*.

Appellant cites to numerous cases of our sister states that have denied the state from seeking a death sentence on a [2] retrial. See, e.g. *People v. Henderson*, 386 P.2d 677 (Ca., 1963) and *New Jersey v. Wolf*, 46 N.J. 301, 216 A.2d 586 (1966). The Commonwealth argues that these cases are distinguishable in that many of them involve scenarios where the imposition of a life sentence was essentially the result of a finding that it is an appropriate sentence rather than as a result of an inability to prove appropriateness of a death sentence. Such a distinction may impact the double jeopardy analysis as such a finding is considered a verdict. However, the distinction is relatively meaningless as it relates to the right to appeal. If one is subjected to a death sentence upon retrial it will impact the decision to appeal regardless of whether or not the double jeopardy clause permits it. These same decisions, although distinguishable as to the double jeopardy analysis, speak eloquently and forcefully about the chilling effect of allowing a death penalty upon retrial. Until our Supreme Court holds to the contrary, I believe we should follow the example of our sister states.

COMMONWEALTH
OF PENNSYLVANIA

vs.

DAVID ALLEN
SATTAZAHN

In the Court of Common Pleas of Berks County, Pennsylvania Criminal

No. 2194/89

IN CAMERA PRETRIAL HEARING
Tuesday, December 29, 1998
Reading, Pennsylvania

Before THE HONORABLE SCOTT D. KELLER,
President Judge

APPEARANCES:

For the Commonwealth:

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For the Defendant:

JOHN T. ADAMS, ESQUIRE
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Reading, Pennsylvania 19603

* * *

[3] Adams, due to the significant length of time between the original trial which was in 1991 and today's date, I see no reason to change venue or venire. However, I will make an official ruling on this after we see how voir dire goes.

MR. ADAMS: That's actually – I have no problem with that resolution to that issue.

THE COURT: All right. So we'll defer an official ruling on – I'm not granting it at this point obviously.

Count No. 3, I'm really not sure exactly what you want me to do here.

MR. ADAMS: Well, Your Honor, I'm not asking really for this Court – I am – as the Court is well aware, I was not involved in this case prior to October of 1998. It appears from my review of the case that the Pennsylvania Supreme Court has not reviewed what I consider an extremely important issue. They did not grant an allowanceof appeal in this case. What I am specifically stating is that we continue to object. And, for the record, we want to make it clear on the record that we will continue to object to the Commonwealth seeking the death penalty. And, specifically, – and also we specifically object to the Commonwealth adding additional aggravating factors with the new trial. I am just requesting that my objection be noted for the record in order that it can be preserved for potential appellate review.

[4] THE COURT: Well, your objection is noted. The Superior Court has ruled. And by denying allowance of appeal, the Supreme Court has ruled affirming the judgment of the Superior Court confirming me when I allowed the Commonwealth to seek the death penalty at this trial and also to add an additional aggravating circumstance. So your objection is noted. I don't think I really need to do anything more with regard to Count No. 3.

That takes care of your motions.

Now, before we actually get into the pretrial conference, I again put together proposed opening remarks and voir dire.

(Whereupon, documents submitted to Counsel.)

THE COURT: We'll go off the record, allowing you an opportunity to just peruse it a little bit.

(Whereupon, discussion off the record.)

THE COURT: We're now going to hold a pretrial conference under Rule 311.

Mr. Adams, is it all right with you that we conduct this in the retiring room?

MR. ADAMS: Absolutely.

THE COURT: All right. Number 1 under the rule is pretrial discovery. I think we've already addressed that. And at present, there don't appear to be any problems that need judicial intervention.

* * *

ORIGINAL

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY,

PENNSYLVANIA CRIMINAL

COMMONWEALTH OF PENNSYLVANIA **NO. 2194/89**

vs.

DAVID ALLEN SATTAZAHN

FIRST DEGREE MURDER

SENTENCING VERDICT SLIP

I. GENERAL INSTRUCTIONS

A. READ THROUGH THE ENTIRE VERDICT SLIP BEFORE BEGINNING DELIBERATIONS.

B. AGGRAVATING AND MITIGATING CIRCUMSTANCES PRESENTED TO THE JURY.

1. The following aggravating circumstance(s) (are) submitted to the jury and must be proved by the Commonwealth *beyond a reasonable doubt:*

(1) Killing while in the Perpetration of a Felony.

(2) Significant history of Felony Convictions involving the use or threat of violence to the person.

2. The following mitigating circumstance(s) (are) submitted to the jury and must be proved by the defendant by a *preponderance of the evidence*:

Any evidence of mitigation concerning the character and record of the Defendant and the circumstances of his offense.

C. DO NOT COMPLETE THIS SENTENCING VERDICT SLIP UNTIL YOUR DELIBERATIONS ARE CONCLUDED. THIS SENTENCING VERDICT SLIP IS ONLY TO BE USED TO RECORD YOUR SENTENCING VERDICT AND THE FINDINGS UPON WHICH IT IS BASED.

D. IF, AFTER SUFFICIENT DELIBERATION, YOU CANNOT UNANIMOUSLY REACH A SENTENCING VERDICT, DO NOT COMPLETE OR SIGN THIS SLIP, BUT RETURN IT TO THE JUDGE. THE JUDGE WILL DETERMINE IF FURTHER DELIBERATIONS ARE REQUIRED; IF THEY ARE NOT, THE JUDGE WILL SENTENCE THE DEFENDANT TO LIFE IMPRISONMENT.

II. SENTENCING VERDICT AND FINDINGS

If you have reached a unanimous verdict, complete this part of the form.

In Section A. indicate whether the sentencing verdict is death or life imprisonment. If the sentence is death, indicate the basis for that verdict by completing Section B. If the sentence is life imprisonment, indicate the basis for that verdict by completing Section C.

A. We, the jury, unanimously sentence the defendant to (check one):

✓ Death

_ Life Imprisonment

[2] B. The findings on which the sentence of death is based are (check one):

____ 1. At least one aggravating circumstance and no mitigating circumstance.

The aggravating circumstance(s) unanimously found (is) (are):

_____

_____

_____

_____

_____

_____

_____

✓ 2. One or more aggravating circumstances which outweigh(s) any mitigating circumstance(s).

The aggravating circumstance(s) unanimously found (is) (are):

1. Killing while in the perpetration of a felony.

   a. Conviction of 1st degree murder of Richard Boyer.

   b. Murder of Perkovitch in Schuylkill County.

2. Significant history of felony convictions involving use or threat of violence to a person.

   a. Robbery conviction at Service Merchandise with threat and violence involved.

The mitigating circumstance(s) found by one or more of us (is) (are):

1. Testimony of mother.

2. Employer's testimony.

3. Pled guilty to 3rd degree murder.

C. The findings on which the sentence of life imprisonment is based are (check one):

____1. No aggravating circumstance exists.

____2. The mitigating circumstance(s) (is) (are) not outweighed by the aggravating circumstance(s).

[3] The mitigating circumstance(s) found by one or more of us (is) (are):

_____

_____

_____

The aggravating circumstance(s) unanimously found (is) (are):

_____

_____

_____

_____

1-22-99
DATE

/s/ Cynthia Rodriguez
JURY FOREPERSON

_____

COMMONWEALTH OF PENNSYLVANIA	:	In the Court of Common Pleas of Berks County,
vs.	:	Pennsylvania Criminal
DAVID ALLEN SATTAZAHN	:	No. 2194/89

SENTENCE
Tuesday, February 16, 1999
Reading, Pennsylvania

Before THE HONORABLE SCOTT D. KELLER,
President Judge

APPEARANCES:

For the Commonwealth: MARK C. BALDWIN, ESQUIRE
District Attorney
County of Berks
Fifth Floor, Services Center
633 Court Street
Reading, Pennsylvania 19601

For the Defendant: JOHN T. ADAMS, ESQUIRE
1720 Mineral Spring Road
Reading, Pennsylvania 19603

ALSO PRESENT: David Sattazahn, Defendant
James Sweitzer, Adult Probation and Parole Officer

DISTRIBUTION: Original and three (3) copies filed with the Clerk of Common Pleas – Criminal, to be distributed to each attorney and the Adult Probation and Parole Office,

and a copy to the computer data processor.

SENTENCE

AND NOW, this 16th day of February, 1999, the jury having returned a sentencing verdict imposing the sentence of death upon the defendant, David Allen Sattazahn, for the first degree murder of Richard Boyer in reference to Count No. 1 of the Information, the said defendant is now formally sentenced to death. He shall be put to death in a manner, time, and place as provided by law.

Said defendant shall be committed to the Bureau of Corrections for confinement in a State Correctional Facility until said sentence of death is carried out. Sentencing is effective this date.

BY THE COURT:

/s/ Scott D. Keller
P.J.

[J-064-2000]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 258 Capital Appeal Docket
Appellee	:	Appeal from Judgment of Sentence entered February 16, 1999 in the Court of Common Pleas, Berks County, Criminal Division at No. 2194-89.
v.	:	
DAVID ALLEN SATTAZAHN,	:	
Appellant	:	
	:	ARGUED: May 1, 2000

OPINION

MADAME JUSTICE NEWMAN **DECIDED: November 27, 2000**

On January 22, 1999, a jury convicted Appellant David Allen Sattazahn (Sattazahn) of first-degree murder in the slaying of Richard Boyer (Boyer) and sentenced him to death. This is a direct appeal of this verdict. As explained below, this was a second trial for Sattazahn regarding the murder of Boyer. The initial trial resulted in a conviction for first-degree murder and the imposition of a life sentence, which the Superior Court reversed on appeal, ordering a new trial. For the reasons that follow, we affirm both the verdict of guilt, and the sentence of death on retrial.

[2] I. FACTUAL AND PROCEDURAL BACKGROUND

On Sunday evening, April 12, 1987, Sattazahn and his accomplice, Jeffrey Hammer (Hammer) hid in a cleared

wooded area waiting to rob Boyer, who was the manager of the Heidelberg Family Restaurant. They had watched Boyer for several weekends and determined that Sunday would be the busiest day in the restaurant. At closing, Sattazahn and Hammer confronted Boyer in the parking lot. Hammer carried a .41 caliber revolver and Sattazahn had a .22 caliber Ruger semiautomatic pistol. With these guns drawn, the pair attempted to rob Boyer of the bank deposit bag with the day's receipts, but Boyer threw the bag toward the restaurant and then again toward the roof of the restaurant. While Sattazahn told Boyer to get the bag, Boyer did not comply and began to run away. Both Sattazahn and Hammer fired shots and Boyer fell to the ground. The two men then grabbed the bank deposit bag and fled.

Following a lengthy trial, a jury on May 10, 1991 convicted Sattazahn of first, second and third-degree murder, two counts of aggravated assault, possession of an instrument of crime, carrying a firearm without a license, and criminal conspiracy. In the penalty phase, the Commonwealth presented one aggravating circumstance (commission of the killing while in the perpetration of a felony). Sattazahn presented as mitigating circumstances his lack of a significant history of prior criminal convictions and his age at the time of the crime. The jury deliberated without reaching a decision on death or life and without making any findings regarding aggravating or mitigating factors. After three and one-half hours, the judge dismissed the jury as hung, and entered a mandatory life sentence. On appeal, based on a jury instruction,

the Superior Court reversed and remanded for a new trial on the remaining charges.[1] [3]

To prepare for a retrial, on March 9, 1995, the Commonwealth filed a notice of intent to seek the death penalty, setting forth the aggravating circumstance presented at the first trial – commission of the killing while in the perpetration of a felony – and adding the circumstance that the defendant had a significant history of felony convictions involving the use or threat of violence to the person.[2] On March 13, 1995, Sattazahn's attorney filed a motion to prevent the Commonwealth from seeking the death penalty and from adding an additional aggravating factor in his retrial, which the trial court denied and the Superior Court affirmed. We denied allocatur and the second trial ensued, resulting in a conviction and the imposition of the death penalty.

---

[1] The Commonwealth filed a petition for allowance of appeal as to the jury instruction. Sattazahn filed a cross-petition for allowance of appeal on other issues. On April 15, 1994, this Court granted the Commonwealth's allocatur petition and denied Sattazahn's cross-petition. However, on December 24, 1994, this Court dismissed the appeal as improvidently granted.

[2] On September 19, 1991, in Berks County, Sattazahn entered guilty pleas on five different burglaries and one robbery. On February 14, 1992, the court sentenced Sattazahn for the burglaries and robbery, as well as sentencing him to life in prison for first-degree murder. He was also ordered to serve consecutive sentences on the remaining convictions from trial that had not merged. Sattazahn filed a timely appeal to the Superior Court. Shortly thereafter, on March 17, 1992, Sattazahn entered a guilty plea to third degree murder in Schuylkill [sic] County for a murder he committed on December 26, 1987. On April 1, 1992, Sattazahn entered a guilty plea for burglary charges in Lebanon County. On appeal, the Superior Court found there was insufficient evidence to support a conviction on the conspiracies to commit third degree murder and aggravated assault, thereby arresting judgment and dismissing those charges.

II. DISCUSSION

A. Sufficiency of the Evidence

Because this is a direct appeal death penalty case, we conduct an independent review of the sufficiency of the evidence supporting the jury's verdict of guilt on the charge of first-degree murder. *Commonwealth v. Clark,* 710 A.2d 31, 34 (Pa. 1998), *cert. denied,* [4] 119 S.Ct. 1465, 143 L.Ed.2d 550 (1999) (citations omitted). The analysis we use to determine if the evidence was sufficient to sustain the conviction for first-degree murder is, whether after viewing all the evidence in the light most favorable to the Commonwealth, as verdict winner, the evidence is sufficient to enable the trier of fact to find every element of the crime of first-degree murder beyond a reasonable doubt. *Id.* To find a defendant guilty of first-degree murder a jury must find that the Commonwealth has proven that he or she unlawfully killed a human being and did so in an intentional, deliberate and premeditated manner. It is the element of a willful, premeditated and deliberate intent to kill that distinguishes first-degree murder from all other criminal homicide. *Id.* Specific intent to kill may be inferred from the defendant's use of a deadly weapon upon a vital party [sic] of the victim's body. *Id.*

With this standard in mind, we have reviewed the evidence and have found it sufficient to support the jury's verdict. At trial, the Commonwealth presented the testimony of Hammer, who testified as to the details of the crime as recited in the fact portion above. Hammer's testimony was confirmed by an autopsy that revealed that Boyer suffered two gunshot wounds in the lower back and one each in the left shoulder, the lower face and the back of the head. All wounds were consistent with being caused by a .22 caliber bullet, the caliber gun that Hammer

attributed to Sattazahn, and which a gun shop owner testified that Sattazahn purchased. Moreover, the .22 and the two slugs recovered from Boyer's body, and the five cartridges found at the scene, were identified as being fired from Sattazahn's gun.

A review of the Record indicates that the facts were more than sufficient to support the conviction. We now turn to the specific issues that Sattazahn has raised.

B. Cross-examination of Hammer

Sattazahn raises two alleged errors based on the trial court's limitation upon the cross-examination of Hammer: (1) regarding Hammer's guilty plea, and (2) preclusion of police reports regarding Hammer, which contained allegedly inconsistent statements.

[5] We discuss first whether Sattazahn is entitled to a new trial because the trial court did not allow defense counsel to cross-examine Sattazahn's cohort in the murder, Jeffrey Hammer, regarding the details of his guilty plea for the third-degree murder of Boyer. Sattazahn argues, *citing Commonwealth v. Birch,* 616 A.2d 977 (Pa. 1992) and *Commonwealth v. Johnson,* 638 A.2d 940 (Pa. 1994), that counsel should have been able to cross-examine the witness broadly to determine his bias to testify that he did not murder Richard Boyer.

> As a general rule, evidence of interest or bias on the part of a witness is admissible and constitutes a proper subject for cross-examination. It is particularly important that, where the determination of a defendant's guilt or innocence is dependent upon the credibility of a prosecution witness, an adequate opportunity be afforded to

> demonstrate through cross-examination that the witness is biased.

Commonwealth v. Birch, 616 A.2d 977, 979 (Pa. 1992). Further, if the Commonwealth's witness might be biased because of treatment received in relation to a plea agreement we have stated that:

> whenever a prosecution witness may be biased in favor of the prosecution because of outstanding criminal charges or because of any non-final criminal disposition against him within the same jurisdiction, that possible bias, in fairness, must be made known to the jury. Even if the prosecutor has made no promises, either on the present case or on other pending criminal matters, *the witness may hope for favorable treatment from the prosecutor if the witness presently testifies in a way that is helpful to the prosecution. And if that possibility exists, the jury should know about it.* The jury may choose to believe the witness even after it learns of actual promises made or possible promises of leniency which may be made in the future, but the defendant, under the right guaranteed in the Pennsylvania Constitution to confront witnesses against him, must have the opportunity at least to raise a doubt in the mind of the jury as to whether the prosecution witness is biased. [6] It is not for the court to determine whether the cross-examination for bias would affect the jury's determination of the case.

Commonwealth v. Hill, 566 A.2d 252 (Pa. 1988), *reargument denied,* 582 A.2d 857 (Pa. 1990), *citing, Commonwealth v. Evans,* 512 A.2d 626-27 (Pa. 1986) (emphasis added).

We have thoroughly reviewed the record and find no instance where defense counsel was prevented from presenting the bias of Hammer. While the trial court sustained several objections related to defense counsel's cross-examination of Hammer when counsel asked Hammer to read a count of the murder charge against him, (N.T. at 347) this ruling did not hinder Sattazahn's ability to show that Hammer was biased. Through counsel's cross-examination of Hammer, the jury heard that Hammer was allowed to plead to third-degree murder in exchange for his testimony against Sattazahn, even though the Commonwealth was at the time seeking the death penalty against Hammer for the murder of Boyer. (N.T. at 331). Thus, Hammer was able to avoid the imposition of the death penalty for his part in the murder because he had agreed to testify against Sattazahn. Additionally, due to Hammer's checkered criminal past for felony burglary, he faced potential jail time of 240 years, but because of the guilty plea and testimony against Sattazahn, he could be paroled for all of his crimes in nineteen years. (N.T. at 228-333). The jury heard more than sufficient evidence to raise bias and we therefore reject Sattazahn's claim that he is entitled to a new trial on this issue.

We now address Sattazahn's contention that the trial court erred in not allowing counsel to cross-examine Hammer regarding statements given to members of the State Police, which would indicate that Hammer lied to them. We reject Sattazahn's argument because again the record does not support his claim. While the trial court did sustain an objection to showing the witness one police report, ultimately defense counsel was successful in showing Hammer another police report after which Hammer testified that he had lied to police. (N.T. at 337-338,

341). Therefore, we agree with the Commonwealth that [7] at best, the impeachment of Hammer with the police report about which he now complains would have been cumulative evidence. Moreover, any error did not prejudice Sattazahn given that the jury heard ample evidence that Hammer lied to police regarding his involvement with several burglaries. Accordingly, Sattazahn is not entitled to a new trial on this issue.

C. Jury Charge

Sattazahn next contends that the trial court erred in its charge regarding "inconsistent statements" given by Hammer and another witness, Franz Wanner. Sattazahn, without any legal authority, argues that the instruction of the court took away from the jury its fact-finding ability. We do not agree. A jury charge by the trial court should be evaluated based on the entire charge and not on discrete portions. *Commonwealth v. Saranchak*, 675 A.2d 268, 276 (1996), *cert. denied*, 519 U.S. 1061 (1997). The only inquiry is whether the instruction adequately, clearly and accurately presents the issue to the jury. *Id.*

The standard jury instruction regarding prior inconsistent statements states the following:

> You have heard evidence that a witness, ___, made a statement on an earlier occasion that was inconsistent with his present testimony. You may consider this evidence for one purpose only, to help you judge the credibility and weight of the testimony given by the witness at this trial. You may not regard the evidence of an earlier inconsistent statement as proof of the truth of anything said in the statement.

Pa.SSJI Crim. 4.08A. The instruction that the trial court gave was essentially identical except that the court stated that each witness "made a statement on an earlier occasion that *may be* inconsistent with his present testimony" and then continued to give the standard instruction verbatim. (N.T. at 519) (Emphasis added). We fail to see how this instruction took away any fact-finding function of the jury and instead we believe that the [8] charge as a whole adequately, clearly and accurately presented the issue to the jury, particularly where it is not entirely clear that either witness made a truly inconsistent statement. Thus, Sattazahn is not entitled to a new trial.

D. Introduction of Evidence in Penalty Phase

By permitting the Commonwealth to introduce evidence during the penalty phase of the trial regarding the nature of prior offenses and alleged facts surrounding the defendant's prior convictions, Sattazahn claims the trial court erred. We disagree. From the time this Court decided *Commonwealth v. Beasley*, 479 A.2d 460 (Pa. 1984), we have consistently held that, in the penalty phase of the trial, the prosecution is permitted to examine the facts surrounding a defendant's previous felony convictions so that a jury may assess whether these prior crimes involved violence sufficient to support the aggravating circumstance in 42 Pa.C.S.A. § 9711(d)(9). *See also Commonwealth v. Reid*, 626 A.2d 118 (Pa. 1993). Accordingly, the trial court did not err in allowing the Commonwealth to present the facts behind Sattazahn's prior guilty pleas for third degree murder and burglary.

Moreover, while Sattazahn baldly contends that Trooper Johnson's testimony was inadmissible and prejudicial

hearsay regarding the details of his past crimes, he does not point to any specific instances, nor does he articulate how any of the troopers' statements prejudiced him. Our review of the record does not support his claims and instead, the properly admitted evidence amply supports the aggravating factor that Sattazahn had a history of committing violent felonies, including murder and burglary. *Cf., Commonwealth v. Young,* 637 A.2d 1313, 1319 n. 9 (Pa. 1993), *cert. denied,* 511 U.S. 1012 (1994) (testimony of officer properly admitted to establish details of crime to support aggravating factor of violent felonies.)

E. Constitutionality of Death Penalty on Retrial

Sattazahn next challenges the constitutionality of allowing the Commonwealth to seek the death penalty on retrial where he received a life sentence in his initial trial. He [9] argues that the Pennsylvania Constitution prohibits its imposition of the death penalty because it guarantees a right to an appeal, equal protection and protection from double jeopardy and that *Commonwealth v. Martorano,* 634 A.2d 1063 (Pa. 1993) was wrongly decided on federal constitutional principles.

We address first the argument that in *Martorano* we wrongly interpreted federal constitutional principles pursuant to *Bullington v. Missouri,* 451 U.S. 430, 101 S.Ct. 1852, 68 L.Ed.2d 270 (1981) and *Arizona v. Rumsey,* 467 U.S. 203, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984). As we set forth in *Martorano,* the United States Supreme Court has consistently reaffirmed the basic principle that the constitutional guarantee against double jeopardy imposes no limitations upon the power to retry a defendant who has succeeded in getting his first conviction set aside. 634 A.2d

at 1068-69. Since the original conviction is nullified at a defendant's behest, the "slate was wiped clean," and the sentencing court can impose any legally authorized sentence, whether or not it is greater than the sentence imposed following the first trial. *Martorano,* 634 A.2d at 1068, *citing North Carolina v. Pearce,* 395 U.S. 711, 720-21 (1969). An exception to this rule exists where the sentencing proceeding resembles a trial. *See, Burlington* [sic]; *Rumsey.*

In *Bullington,* a defendant was tried for capital murder and at the guilt phase of trial, the jury returned a verdict of guilty. As required by statute, the trial court then conducted a sentencing hearing before the same jury that had found the defendant guilty. The parties were afforded the opportunity to present additional evidence in aggravation or mitigation of punishment. After argument, instructions from the judge and deliberation, the jury returned a unanimous verdict of life imprisonment. When Bullington was granted a new trial on appeal, the state notified him of its intention to seek again the death penalty. Because the first sentencing jury, by choosing life, impliedly decided that the prosecution had not proved its case for death, the result was that the jury "acquitted" the defendant of [10] the death penalty. This "acquittal on the merits" precludes the State from seeking the death penalty upon retrial. 451 U.S. at 434-35.

In *Rumsey,* the Court applied *Bullington* to preclude the state from seeking the death penalty upon retrial after the trial judge "acquitted" the defendant of the death penalty at the sentencing hearing. Justice O'Connor wrote:

> The double jeopardy principle relevant to respondent's case is the same as that invoked in *Bullington:* an acquittal on the merits by the sole decisionmaker in the proceeding is final and bars

> retrial on the same charge. Application of the *Bullington* principle renders respondent's death sentence a violation of the Double Jeopardy Clause because respondent's initial sentence of life imprisonment was undoubtedly an acquittal on the merits of the central issue in the proceeding – whether death was the appropriate punishment for respondent's offense. The trial court entered findings denying the existence of each of the seven statutory aggravating circumstances, and as required by state law, the court then entered judgment in respondent's favor on the issue of death. That judgment, based on findings sufficient to establish legal entitlement to the life sentence, amounts to an acquittal on the merits and, as such, bars any retrial of the appropriateness of the death penalty.

104 S.Ct. at 2310.

In *Martorano,* we applied *Bullington* and *Rumsey* and held that the Commonwealth is not precluded from seeking the death penalty on retrial, where, following their first trial, defendants were convicted of first-degree murder and sentenced to life imprisonment, not by a unanimous jury verdict, but by the trial judge following the jury's deadlock regarding the penalty. The hung jury did not act as an acquittal on the merits as did the proceedings at issue in *Bullington* and *Rumsey.*

Sattazahn argues that *Martorano* was wrongly decided because it is irrelevant whether the life sentence is a result of a unanimous jury verdict or operation of law following jury deadlock because either situation is an acquittal on the merits. This is the [11] exact issue raised by the Appellant in *Martorano* and after a thorough discussion of *North Carolina v. Pearce,* 395 U.S. 711, 89 S.Ct.

2072, 23 L.Ed.2d 656 (1969); *Bullington v. Missouri,* 451 U.S. 430, 101 S.Ct. 1852, 68 L.Ed.2d 270 (1981); *Arizona v. Rumsey,* 467 U.S. 203, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984) and *Poland v. Arizona,* 476 U.S. 147, 106 S.Ct. 1749, 90 L.Ed.2d 123 (1986) we rejected it stating that:

> What respondents fail to apprehend is the significance of the absence of decision in the instant case. Here, unlike the sentencer in *Bullington* or the other cases just discussed, the jury did not make a decision on the merits regarding an appropriate penalty. It did not find that the state had failed to prove its case. It made no findings about the existence of any aggravating or mitigating circumstances. It was deadlocked. Since it made no decision, there could not in fact be any " acquittal on the merits." Nor did the imposition of a life sentence by the trial judge operate as an acquittal. Under Pennsylvania's sentencing scheme, the judge has no discretion to fashion sentence once he finds that the jury is deadlocked. The statute directs him to enter a life sentence. 42 Pa.C.S. § 9711(c)(1)(v) (. . . if . . . further deliberation will not result in a unanimous agreement as to the sentence, . . . the court shall sentence the defendant to life imprisonment.) (emphasis added). The judge makes no findings and resolves no factual matter. Since judgment is not based on findings which resolve some factual matter, it is not sufficient to establish legal entitlement to a life sentence. A default judgment does not trigger a double jeopardy bar to the death penalty upon retrial.

634 A.2d at 1070. In addition, in *Martorano* we rejected the argument that, because the death penalty statute makes no distinction between a unanimous jury verdict of life imprisonment and a jury's deadlock, a hung jury

equals an acquittal on the merits. In rejecting this argument, we stated that:

> While at first blush this interpretation may seem appealing, it loses its force when both subsections are read together and in their entirety. Subsection (iv) specifies the possible jury verdicts which may be entered upon conviction for first-degree [12] murder. Subsection (v) details the sentencing procedure to be followed in the absence of a jury verdict, i.e. when "further deliberation will not result in a unanimous agreement as to the sentence". Contrary to respondents' contentions, the last sentence of subsection (iv) states nothing more than that the verdict is life imprisonment when the jury unanimously agrees that the sentence should be life because there was neither (1) one aggravating and no mitigating circumstance, nor (2) aggravating circumstances sufficient to outweigh the mitigating circumstances. In the absence of a unanimous verdict, subsection (v) provides for the discharge of the jury and imposition of a life sentence by the court.
>
> If the jury's failure to reach a unanimous agreement as to sentence could function as a verdict, subsection (v) would be superfluous. When there is a verdict, the court does not discharge the jury. Instead, it receives and records the verdict, and imposes the sentence fixed by the jury.
>
> Since there was no jury unanimity as to sentence during respondents' first trial, there could be no jury verdict. Accordingly, there was no acquittal on the merits of the death penalty. Nothing in Pennsylvania's sentencing statute precludes imposition of the death penalty upon reconviction, so long as the sentencer finds that the evidence is sufficient to warrant it.

634 A.2d at 1072. Sattazahn offers no compelling reason for us to reverse *Martorano* today, and we decline to do so.

We now turn to Sattazahn's argument that Pennsylvania's constitutional provisions regarding double jeopardy, right of appeal, due process and equal protection bar the Commonwealth from seeking the death penalty on retrial. We must reject this claim as we have held otherwise in *Martorano,* where this Court held that Pennsylvania's constitutional analysis of these issues is the same as the federal approach. We stand by that decision. Accordingly, the Pennsylvania Constitution does not prohibit the Commonwealth from seeking the death penalty on retrial where a life sentence is imposed in the first trial.

[13] Sattazahn argues that *Martorano* is flawed because it failed to consider a defendant's Pennsylvania constitutional right of appeal pursuant to Article V, which has no counterpart in the federal constitution and that this Article, in combination with Pennsylvania's double jeopardy, due process and equal protection provisions, affords greater rights. Most of this argument is in reality a rehashing of the arguments that we soundly rejected in *Martorano* except that Sattazahn puts a new gloss on the argument, claiming that to allow the Commonwealth to seek the death penalty on retrial acts as a de facto denial of the right to appeal. His argument is that any rational defendant who receives a life sentence imposed by a judge after a hung jury during the penalty phase will forego his or her appeal for fear of being executed should he or she win on appeal but lose upon retrial. In other words, it has a chilling effect on any defendant exercising his or her constitutional rights. Sattazahn points to other states having a state constitutional right to appeal such as Louisiana, New Jersey, Utah, Alaska, California and West

Virginia. He argues that Pennsylvania should embrace the policy considerations set forth in the case law of these states.

We reject Sattazahn's invitation to expand the interpretation of our Constitution and reaffirm our holding in *Martorano* that "the federal approach to this issue is a sound one. It accords respondents the right to a fair trial, while preserving society's interest in imposing the appropriate punishment on one who has been convicted after obtaining such a trial." 634 A.2d at 1071. Moreover, we do not believe that a defendant's right to appeal is "chilled." In *Chaffin v. Stynchcombe,* 412 U.S. 17, 93 S.Ct. 1977, 36 L.Ed.2d 714 (1973), which we relied upon in *Martorano* to reject the Appellant's federal Fourteenth Amendment arguments, the Supreme Court aptly stated that the Constitution does not forbid:

> every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.
>
> * * *
>
> [14] *the choice occasioned by the possibility of a harsher sentence . . . does not place an impermissible burden on the right of a criminal defendant to appeal . . . his conviction.*

Chaffin v. Stynchcombe, 412 U.S. at 30, 35 (emphasis added).

Sattazahn ignores the fact that in *Chaffin* the United States Supreme Court has rejected the claim that a harsher sentence on retrial has a chilling effect on the defendant's right to appeal or collaterally attack his conviction. We believe that this analysis applies equally to Sattazahn's arguments pursuant to the Pennsylvania

Constitution and thus, stand by our determination in *Martorano* that there is no distinction between the state and federal approaches with regard to whether the prosecution can seek a harsher sentence at retrial.

F. Addition of Aggravating Factor

Last, Sattazahn argues that the Commonwealth should not have been allowed to add an additional aggravating factor because there is no statutory authority for the addition of aggravating factors upon retrial when the original sentence was life imprisonment. We disagree. As we stated in *Martorano,* an order for a new trial wipes the slate clean. The criminal history of Sattazahn changed since the original trial in May of 1991. At the time of the retrial, he had a significant history of felony convictions that involve the threat of violence to the person. The fact that the offenses occurred after the instant murder is irrelevant under the law. *E.g., Commonwealth v. Williams,* 660 A.2d 1316, 1323 (Pa. 1995) (jury may consider all of defendant's existing convictions, including crimes committed after the crime at issue). Thus, the trial court did not err.

III. CONCLUSION

Finding no error, we affirm both the verdict of guilt and the sentence of death on retrial. The Prothonotary is hereby directed to transmit to the Governor's Office the [15] complete records of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court of Pennsylvania pursuant to 42 Pa.C.S. § 9711(i).

Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Flaherty and Mr. Justice Nigro join.

DISSENTING OPINION

MR. JUSTICE SAYLOR DECIDED: November 27, 2000

As the majority observes, precedent at both the federal and state levels would allow a capital defendant who has been sentenced to life imprisonment as the result of a deadlocked jury to be exposed to the death penalty upon retrial. Nevertheless, I am troubled by the chilling effect that such a rule places upon the right of appeal guaranteed by our state Constitution. In my view, the ends of justice would be better served if, in our supervisory role respecting the administration of capital cases in Pennsylvania, we were to require that such a defendant, if convicted upon retrial, must receive the life sentence originally imposed. Such a requirement would be consistent with the legislative intent that if even a single juror decides against the death penalty, the penalty will not be imposed. Accordingly, I respectfully dissent.

Mr. Chief Justice Flaherty and Mr. Justice Nigro join this dissenting opinion.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

November 27, 2000 — Case DECIDED and Judgment entered for the following matter:

NEWMAN, J.:

Commonwealth of Pennsylvania,
Appellee

v.

David Allen Sattazahn,
Appellant

No. 258
Capital Appeal Docket
(J-64-2000)

WE AFFIRM BOTH THE VERDICT OF GUILT, AND THE SENTENCE OF DEATH ON RETRIAL

Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Flaherty and Mr. Justice Nigro join.

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543-0001

March 18, 2002

Robert B. Dunham, Esq.
Suite 545 West
The Curtis Center
Philadelphia, PA 19106

Re: ***01-7574 – Sattazahn v. Pennsylvania***

Dear Mr. Dunham:

The Court today entered the following order in the above case:

> "The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted."

If you have any questions, please contact me.

Sincerely,

WILLIAM K. SUTER, CLERK
/s/ Denise J. McNerney
Denise J. McNerney
Merits Cases Clerk
(202) 479-3032

Enclosures